(2014) 02 KL CK 0166

In the High Court Of Kerala

Case No : C.E.A. No. 2 of 2014

Plaza (M/s.) APPELLANT

Vs

Joint Commissioner of Central Excise and Others RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2015) 49 GST 10 : (2014) 2 KHC 72 : (2014) 35 STR 212

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : C.S. Gopalakrishnan Nair and Chandini G. Nair, Advocate for the Appellant; John Varghese, Standing Counsel, Central Board of Excise and Thomas Mathew Nellimoottil, Central Government Standing Counsel, Advocate for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—Appellant herein is before us aggrieved by the order of Customs Excise and Service Tax Appellate Tribunal dated 20/08/2013. Entire dispute revolves around certain amounts to be paid as service tax amounting to Rs. 6 lakhs and odd. It is not in dispute that after Annexure-A1 show-cause notice, a reply was sent wherein the stand of appellant was mentioned. Subsequently, as per Annexure-A2 order dated 13/08/2010, first respondent proceeded with adjudication of the matter and confirmed the demand raised in the show-cause notice and also directed to pay interest. This came to be challenged by filing an appeal after a period of 40 days over and above the condonable period from the date of communication of Annexure-A2. According to Appellate Tribunal, the period over and above the condonable period cannot be condoned, therefore, appeal came to be rejected. Aggrieved by the same, appellant is before us contending that when appellant was not liable to pay any tax and the demand per se is arbitrary and illegal, question of considering condonation of delay would not arise and on that ground itself, his case has to be entertained. Said argument of appellant, no doubt, is very attractive, but the fact remains, immediately after show-cause notice at Annexure-A1, way back in 2009, he did challenge the said show-cause notice contending that it is per se arbitrary and illegal. Even otherwise, such contention cannot be entertained as we are dealing with an appeal under a particular Statute and not under Article 226 of the Constitution. Then coming to the real question of controversy now raised before us, according to appellant, the said delay was on account of lapses on the part of counsel to whom the matter was entrusted and there was no deliberate intention. Probably, this reasoning could have been considered by Appellate Authority, provided if the appeal was to be filed within the condonable period. In the light of the fact that the provision provides three months time to file appeal before Commissioner (Appeals) without any application for condonation of delay and thereafter another three months time is provided as condonable period of limitation to file appeal, it is very clear that beyond period of six months from the date of service of the impugned order there is no provision under the Act to entertain an appeal. By referring to Singh Enterprises v. CCE Jamshedpur 2008 (257) ELT 3 (SC) Appellate Authority dismissed the appeal opining that there is no merit in the said appeal and condonation application cannot be entertained.

2. We have gone through the proceedings and also relevant section under the Act, i.e., Section 85(3) of the Finance Act. According to learned Standing Counsel, when a particular period is prescribed as condonable period, Appellate Authority has no power to condone the delay beyond the period of 30 days. He places reliance on Amchong Tea Estate v. Union of India 2010 (257) ELT 3 (SC). Facts in the above decision are similar to the present factual situation. The question that arose before Their Lordships was whether Commissioner (Appeals) is having power to condone the delay showing sufficient cause under provision of Limitation Act, i.e., Section 5. Their Lordships opined that when a specific provision like Section 35 of the Central Excise Act, 1944 prescribes period of limitation, being a special law it would override general law, therefore, placing reliance in the case of Singh Enterprises (supra), opined that Appellate Authority has no power to condone the delay beyond the period prescribed under the Act. In the present case also beyond six months from the date of service of the order impugned, Appellate Authority cannot consider application for condonation of delay and there is justification in rejecting such application filed by the appellant.

We find no good ground to interfere with the order of Appellate Tribunal. Accordingly, the appeal is dismissed.

