(2011) 06 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 7350 of 2011

Senior Superintendent of Post Office APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Finance Act, 1994 — Section 85, 85(3)

Citation : (2011) 24 STR 168

Hon'ble Judges : Sonia Gokani, J;Akil Kureshi, J

Bench : Division Bench

Advocate : P.R. Nanavati, for the Appellant;

Judgement

Akil Kureshi, J.—Senior Superintendent of Post Office, Surat has filed this petition challenging the order dated 30-8-2010 passed by respondent No. 3 herein, who happens to be Commissioner (Appeals), Central Excise and Customs, Surat. By the impugned order, appeal of the petitioner against the orders dated 31-3-2009 passed by the Assistant Commissioner Service Tax (hereinafter referred to as "the adjudicating authorities"), came to be dismissed on the ground of delay. In the impugned order the Commissioner (Appeals) was pleased to record as under :-

4. This is an appeal filed u/s 85 of the Finance Act, 1994. The appeal was required to be filed within 3 months as per statutory provisions of sub-section (3) of the Section 85 of the Finance Act, 1994. The proviso to the sub-section (3) has empowered the Commissioner (Appeal) to condone delay upto 3 months. The appeal in this case is filed after a lapse of one year. Under such facts and circumstances, I have no option but to reject the appeal at the threshold as filed after the statutory limitation and delayed beyond the power of condonation of delay.

2. From the above quoted portion of the impugned order, it can be seen that the appeal was dismissed only on the ground that the same was filed after 1 year

and that the appellate authority had power to condone delay only upto a maximum period of 3 months.

3. To the statutory provisions contained in the Finance Act, 1994 with respect to filing of appeal and limitation etc, there is no dispute. It is thus not in dispute that the power of Commissioner (Appeals) to condone the delay is only upto a maximum period of three months.

4. In that view of the matter, we find no illegality in the order under challenge. Counsel for the petitioner, however, drew our attention to the judgment of this Court in the case of D.R. Industries Ltd. and Another Vs. Union of India (UOI) and Others, to contend that even in such cases where there is statutory limit to which delay can be condoned, the High Court in its extraordinary power can, in appropriate cases, interfere. To the preposition laid down in the said decision, we are not joining the issue. In a given case, an aggrieved person can knock the doors of the High Court seeking redressal against the orders in original and the High Court, in its extraordinary powers under writ jurisdiction of Article 226 of the Constitution, may for valid reasons, to obviate extreme hardship or injustice, entertain a challenge even beyond the period of limitation prescribed. In the present case, however, we are not inclined to adopt such a course for the simple reason that the amount of service tax and penalty demanded is not very large. Further, in any case it is a question of payment of tax from one Central Government Department to another Central Government Department. Looking to the facts and circumstances of the case, we are not inclined to exercise extraordinary discretionary jurisdiction and, therefore, the petition is dismissed.

5. Counsel for the petitioner submitted that looking to the peculiar nature of the litigation, the petitioner may attempt to resolve the dispute through departmental channel. Nothing stated in our order would come in the way of the petitioner to pursue the matter further.

6. With above observations, petition is disposed of.

Direct service permitted.

