(2013) 02 KL CK 0003

In the High Court Of Kerala

Case No : WP(C) No. 4920 of 2013(L)

T.L. George APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 40 STT 44

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Judgement

Antony Dominic, J.—Petitioner says that on the strength of Ext. P1, he constructed eight separate residential quarters of 750 sq.ft. each and two separate quarters of 950 sq.ft. each for the fourth respondent. On the basis that the said work attracted the levy of service tax. After issuing notice, Ext. P5 order was passed by the second respondent. By this order, service tax, interest and penalty were levied on the petitioner. Subsequently, he was issued Ext. P6 communication dated 11.01.2013, whereby the third respondent demanded payment of the amount due under Ext. P6 relying on Ext. P6(2) circular issued by the Government of India. It is on receipt of Ext. P6, the petitioner has filed this writ petition.

2. When the writ petition was taken up, the counsel for the petitioner justified the filing of the writ petition without availing of the statutory remedy of an appeal as provided u/s 85 of the Finance Act, 1995. According to the counsel, although Section 85 provided for filing of an appeal within three months from the date of receipt of a copy of the order, with power to the Appellate Commissioner to condone delay of a further period of three months, the first respondent is declining to accept appeals filed beyond two months of receipt of the order.

3. In view of the above assertion made by the counsel for the petitioner, the case was adjourned with a direction to the learned standing counsel for the respondents to obtain instructions in the matter. Accordingly, instructions have been obtained. The counsel has produced before me the Finance Act as amended

by Finance Act, 2012. It is seen from Section 85, which provides for an appellate remedy before the first respondent that as per the Act before its amendment in 2012, appeal shall be presented within three months from the date of receipt of the decision or order. The proviso to Section 85(3) also empowered the appellate authority to condone delay of a further period of three months, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial three months period.

4. This statutory provision was amended by the Finance Act, 2012 with effect from 28.05.2012 and Section (3A) and its proviso introduced by the Finance Act, 2012 reads thus:

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such Adjudicating Authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to Service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

5. Reading of the above provision shows that as against the earlier provision enabling filing of an appeal within three months, the said period has now been reduced to two months. Similarly, the provision enabling condonation of delay of three months also has been reduced to one month.

6. On this basis, the standing counsel for the respondents submitted that Ext. P5 order was issued by the second respondent on 18.09.2012, which is after the insertion of Section 3A extracted above. According to him, the petitioner having not filed appeal within the time as specified in the newly introduced Section 3A cannot complain that any appeal filed beyond a period of three months from the date of receipt of Ext. P5 should have been accepted by the Appellate Authority. Thus, this is a case where the petitioner has failed to file the appeal within the time as specified in Section 85(3A) and if that be so, I cannot find fault with the first respondent in not having accepted the appeal filed beyond the periods specified in the Act. From this, therefore, it is obvious that the petitioner having lost to the appellate remedy on account of his own latches cannot seek to challenge Ext. P5 in a proceedings under Article 226 of the Constitution of India. This view, I have taken in fully supported by the principles laid down by a Division Bench in the judgment in Assistant Commissioner of Central Excise Vs. Krishna Poduval, . Therefore, I do not find any reason to entertain the writ petition.

For the aforesaid reasons, the writ petition is dismissed.