(2014) 11 KL CK 0254

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28764 of 2014 (U)

Varghese Thomas — APPELLANT

Vs

Commissioner of Central Excise (Appeals), Service Tax Customs and Central Excise — RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35 — Constitution of India, 1950 - Article 226 — Finance Act, 1994 - Section 87(b)(1) — Limitation Act, 1963 - Section 5

Citation : (2015) 50 GST 467 : (2015) 40 STR 659

Hon'ble Judges : P.R. Ramachandra Menon, J.

Bench : Single Bench

Advocate : B. Krishna Mani, Advocate, for the Appellant; Thomas Mathew Nellimoottil, for the Respondent

Judgement

P.R. Ramachandra Menon, J.?The petitioner has approached this Court with the following prayers:

"(i) Call for records leading to Ext. P6 and quash Exts. P3 and P5 by a writ of certiorari or any other appropriate writ, order or direction;

(ii) Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents not to demand the amount mentioned in Exts. P3 and P5 from the petitioner;

(iii) Issue a writ of mandamus or any other appropriate writ, direction or order directing the respondents to refund the amount collected in terms of Ext. P5 from the IDBI Bank as mentioned therein;

(iv) Issue an interim direction directing the respondents not to demand the amount mentioned in Exts.P3 and P5 from the petitioner.

(v) Award costs."

The issue involved is in relation to the ownership of building, the rent being collected and the liability to satisfy the ''service tax'' in terms of the ''Finance Act''. The petitioner is the owner of four floors of the building. The basement as well as the ground floor belong to the brother. The ''service tax'' payable was not satisfied with reference to the rent collected, when the petitioner was served with Ext. P1 show cause notice dated 22.11.2013, issued by the 2nd respondent. The petitioner filed Ext. P2 reply on 23.01.2014. After considering the same, the proceedings came to be finalised by the 2nd respondent as per Ext. P3 dated 29.01.2014. After passing the said order, the 3rd respondent issued Ext. P5 notification to the Bankers of the petitioner under Section 87(b)(1) of the Finance Act, 1994 and appropriated a sum of Rs. 5,77,000/-, which was lying in the account of the petitioner. The case of the petitioner is that he was suffering of back pain as borne by Ext.P7 Medical Certificate dated 29.10.2014 and hence he could not pursue the matter on time. It is also pointed out that, in respect of the previous year the petitioner has challenged the proceeding by way of Ext. P4 appeal and the same is pending. The learned counsel submits that Ext.P3 order has been passed by the 2nd respondent, absolutely without any regard to the actual facts and circumstances and the relevant provisions of law finalizing the proceedings quite a mechanical manner and hence the challenge.

2. The learned standing counsel for the respondents submits that, there is absolutely no basis for the submissions made on the part of the petitioner, who has collected the service tax, but failed to remit the same before the concerned authorities. It is stated that the proceedings are within the four walls of law and not assailable under any circumstances.

3. The learned counsel for the petitioner submits that the petitioner does not have any dispute with regard to the principal amount to be satisfied and even in Ext. P2 reply submitted by the petitioner, willingness has been offered to satisfy the same. The prayer was only to waive the penalty and interest payable.

4. The point to be considered is, whether the case projected by the petitioner with reference to the merit of Ext. P3 order, is liable to be entertained by this Court when the statutory period for filing the appeal is already over. In other words, can this Court extend the period of limitation under a particular statute under Article 226 of the Constitution of India.

5. The issue come up for consideration before the Hon''ble Apex Court in Singh Enterprises v. CCE [2008] 12 STT 21. After meticulous analysis of the relevant provisions of law, it was held that, the appeal had to be preferred within the specified time. With reference to Section 35 of the Central Excise Act and the power to condone the delay, it was held that, it could only be within the statutory limit and sufficient reason has to be shown. The Apex Court also made it clear that the Section 5 of the Limitation Act could not be applicable in such cases and it will not be proper for the High Court or the Supreme Court to condone the delay even when the statutory prescribed period of limitation is already over.

6. The question came up for consideration before this Court as well, under similar

circumstances, in Writ Appeal Nos. 715/05 & 717/05. Applying the relevant provisions of law to the relevant facts and circumstances, a Division Bench of this Court held, vide the decision in Asstt. CCE v. Krishna Poduval [2006] 3 STT 96, that once the statutory remedy is ''barred by limitation'', the remedy comes to an end and the same cannot be entertained invoking the writ jurisdiction. In the above circumstances, this Court finds it difficult to entertain the proposal made by the petitioner or to consider the question on merits, as the jurisdiction of this Court is totally barred, in view of the declaration of law by the Apex Court and also by a Division Bench of this Court as mentioned above. Interference is declined and the writ petition is dismissed accordingly. However, considering the persuasive submissions made by the learned counsel for the petitioner, this Court finds that an opportunity could be given to the petitioner to wipe of the liability in a phased manner, particularly in view of the physical ailments projected from the part of the petitioner with reference to Ext.P7 Medical Certificate and such other reasons. Considering the extent of liability to be cleared, after the amounts appropriated by way of Ext.P5, the outstanding liability shall be cleared by way of ''six'' equal monthly instalments, the first of which shall be effected on or before the 15th of December, 2014, followed by similar instalments, to be effected on or before the 15th of the succeeding months. Subject to this, the recovery proceedings shall be kept in abeyance, for the time being. It is made clear that, if any single default is committed with regard to the satisfaction of the amount'' as above, it will be open for the respondents to proceed with further steps for realization of the entire amount in lump, by pursuing such steps from the stage where it stands now.

