Joseph George vs Deputy Commissioner of Central Excise

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Court : Kerala

Decided On : Oct-26-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/34565/2015

Appellant : Joseph George

Respondent : Deputy Commissioner of Central Excise

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL THURSDAY, THE 26TH DAY OF OCTOBER 2023 / 4TH KARTHIKA, 1945 PETITIONER/S: JOSEPH GEORGE S/O.LATE A.J.GEORGE, AZHIKKAKATHU HOUSE,CHERANALLOOR, CHITTOOR ROAD, CHERANALLOOR P.O.KOCHI - 682 034. BY ADVS. SRI.K.SASIKUMAR SRI.S.ARAVIND SRI.P.S.RAGHUKUMAR RESPONDENT/S: 1 DEPUTY COMMISSIONER OF CENTRAL EXCISE SERVICE TAX DIVISION, CENTRAL EXCISE BHAVAN,KATHRIKADAVU, KOCHI - 682 017. 2 THE COMMISSIONER OF CENTRAL EXCISE CUSTOMS AND SERVICE TAX (APPEALS - 1) C.R.BUILDING, I.S.PRESS ROAD,KOCHI - 682 018. BY ADVS.

SRI.SAIBY JOSE KIDANGOOR SMT.SHEELA DEVI.I., SC, CENTRAL BOARD OF EXCISE amp CUSTOM THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner being a contractor had been taking civil contracts

relating to erection of petrol pump and connected structures. For executing such works, he was registered with the Central Excise Department as per the registration certificate dated 15.3.2007. Service tax up to 31.5.2007 under the category of 'Commercial or Industrial Construction Service' had already been paid and thereafter with effect from 1.6.2007 started paying service tax under 'Works

Contract Service' with effect from 1.6.2007, but the respondent department realizing that the tax had not been paid imposed liability vide Exts.P7 and P8 dated 19.10.2009 and 20.10.2009 respectively by confirming the demand and imposition of penalty. The said order, as per the provisions of Section 85 of the Finance Act, 1994 were appealable. Appeals were filed on 16.6.2010. There was a delay of one month and 26 days. The delay occurred on account of the fact that Adovcate P.A joseph, who filed the appeal unfortunately died on 25.10.2010. Commissioner, Tax Appeals dismissed the appeal by holding that it was time barred; no reasons have been assigned. It is further contended that the petitioner cannot be made to suffer on account of the lapse of the counsel. In support of the contentions relied upon judgment of the Supreme Court in 1981 AIR 1400 (Rafiq and Anr. v. Mushilal and Anr.) .

2. On the other hand, learned Government Pleader opposed the prayer and submitted that the delay in total was 7 months and 26 days, rightly so the appeal was dismissed.

3. I have heard the learned counsel for the parties and appraised the paper book. Section 65 of the Finance Act, 1994 reads as under:

85. Appeals to the Commissioner of Central Excise (Appeals)

(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of

receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this chapter, made before the date on which the Finance Bill, 2012 receives the assent of the President: 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 three months, allow it to be presented within a further period of three months.

(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.

(4) The Commissioner of Central Excise (Appeals) shall hear and determine

the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty: Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and

making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excises and Salt Act, 1944 (1 of 1944).

4. On perusal of the same, the appeals have to be filed within

a period of three months with a power to condone. Concededly, the advocate who was the appeal unfortunately died on 25.10.2010 and by that time the appeal had not become time barred. But later on when realized the same, filed the writ petition on 16.11.2015 with the delay of one month and 26 days. It is settled law that the litigant cannot be made to suffer on account of either of the lapse of the counsel or a situation beyond his control. In the present case, the situation was beyond the control of the petitioner. The quasi judicial authorities who entrusted with a power to decide the appeal should be pragmatic and not harsh dismissing the appeal in the following manner and mode:

APPEALS ARE REJECTED AS TIME BARRED

5. For the reason aforementioned, impugned order Ext.P11 is

set aside. The appeals are restored to original number. Competent authority Commissioner of (Appeals) is directed to decide the appeal as expeditiously as possible, within a period of six months from the date of receipt of a certified copy of the judgment. Writ petition is disposed of. sd/- sab AMIT RAWAL JUDGE APPENDIX OF WP(C) 34565/2015 PETITIONER EXHIBITS

EXT.P-1: A TRUE COPY OF THE REGISTRATION CERTIFICATE IN FORM ST-2 DATED 15.3.2007 ISSUED BY THE SUPERINTENDENT OF CENTRAL EXCISE, SERVICE TAX E RANGE CENTRAL EXCISE BHAVAN, KATHRIKADAVU, KOCHI - 17 EXT.P-2: A TRUE COPY OF THE NOTIFICATION NO.29/2007 - ST DATED 22.5.2007 EXT.P-3: A

TRUE COPY OF THE NOTIFICATION NO.32/2007 - ST DATED 22.5.2007 EXT.P-4: A TRUE COPY OF THE NOTIFICATION NO.1/2006 DATED 1.3.2006 EXT.P-5: A TRUE COPY OF SHOW CAUSE NOTICE NO.51/2008 ST DATED 16.10.2008 ISSUED BY THE IST RESPONDENT EXT.P-6: A TRUE COPY OF THE SHOW CAUSE NOTICE NO.12/2009 - ST DATED 19.3.2009 EXT.P-7: A TRUE COPY OF THE ORDER NO.47/2009 ST DATED 19.10.2009 EXT.P-8: A TRUE COPY OF THE ORDER - IN - ORIGINAL NO.49/2009 - ST DATED 20.10.2009 (ISSUED ON 21.10.2009) EXT.P-9: A TRUE COPY OF THE APPEAL NO.169/ST/CHN/2010 EXT.P-10: A TRUE COPY OF THE APPEAL NO.170/ST/CHN/2010 EXT.P-11: A TRUE COPY ORDER - IN - APPEAL NO.COC - EXCUS - 000 - APP - 153 & 154 - 15- 16 DATED 20.10.2015