HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No.13826/2019
With
D.B. Civil Misc. Stay Application No.12935/2019

Ataullah Construction Private Limited, Plot No. 11, Uttaranchal Colony, Parbatpura Bye Pass, Ajmer In The State Of Rajasthan, Through Director.

----Petitioner

Versus

1. Commissioner (Appeals) Central Goods And Service Tax, Jaipur Having Address At New Central Revenue Building, Statue Circle, Bhagwan Das Road, Jaipur In The State Of Rajasthan.
2. Assistant Commissioner Central Goods And Service Tax, Ajmer Having Address At Civil Lines, Opp. Sessions Court, Ajmer In The State Of Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Prateek Kedawat
For Respondent(s)	:	Mr. Vartika Mehra for Mr. Sandeep Pathak

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE NARENDRA SINGH DHADDHA

Judgment

18/10/2019

This writ petition on behalf of petitioner Ataullah Construction Private Limited challenges the order dated 23.07.2019 (19.07.2019 mentioned in writ petition as Annexure-6) of the Commissioner (Appeals), Central Excise and Central Goods & Services Tax, Jaipur, whereby petitioner's appeal has been dismissed on the ground of time bar without going into merits of the case.

Learned counsel for petitioner has submitted that the petitioner is holder of Service Tax Registration

No.AAGCA6418DST001 for 'Maintenance or Repair Service' and 'Erection, Commissioning and installation services'. The adjudicating authority vide order dated 27.08.2018 issued an order in original in disregard of the contentions made by the petitioner assessee in the declaration filed by him, thereby creating an illegal demand of service tax of Rs.22,55,293/- (including Education and SHE Cess) under Section 73(2) of the Finance Act, 1994, interest under Section 75 of the Finance Act, 1994 on the determined service tax, and penalty of Rs.22,55,293/- under Section 78 of the Finance Act, 1994. He however was not provided certified copy of the order in original dated 27.08.2018. The petitioner learnt about the aforesaid order only after he received a telephonic call for recovery of demand. He then came to know that a demand is outstanding. On verification of the record, the petitioner found that no such copy of the order in original dated 27.08.2018 has been received by the petitioner or in his office. The petitioner through his Director on 23.04.2019 immediately along-with an affidavit requested respondent no.2 - the Assistant Commissioner, Div.J, Central Goods & Services Tax, Ajmer, that if the adjudicating authority to provide him copy of the order in original dated 27.08.2018, which was never received by him at their address. In response thereto, the respondent no.2, vide letter dated 10.05.2019, provided certified copy of the order in original to the petitioner. The petitioner without any delay filed an appeal under Section 35 of the Central Excise Act, 1944 in Form ST-4 before the Commissioner (Appeals-I), CGST, Central Goods & Services Tax Commissionerate, Jaipur, on 07.06.2019. However, the Commissioner, without going into the merits of the case, dismissed the same on the ground of limitation.

Learned counsel for petitioner submitted that the respondent no.1 ought to have entertained his appeal on merits as he has also filed an application seeking condonation of delay giving all the aforesaid reasons. The Commissioner has mechanically rejected the appeal.

Learned counsel for the respondent has submitted that the respondent sent a copy of the order to the petitioner by post and that he has received a report from the postal department that he has delivered the same to the addressee. Reference is made to the letter dated 10.05.2019 sent by the Assistant Commissioner of the Central Excise and Central Goods & Services Tax, Ajmer, to the petitioner.

Despite opportunity, the respondents have not filed reply controverting the averments made in the writ petition. Even though the respondents are asserting that the letter was sent to the petitioner by post but the petitioner has filed an affidavit of its Director of M/s. Attaullah Constructions Pvt. Ltd., Ajmer that not only she did not have any knowledge of the order having passed against the petitioner company but also the copy of the order-in-origin was received by her only when the respondent called the petitioner for initiation of recovery proceedings. The detailed representation which the petitioner submitted to the respondent no.2 dated 23.04.2019 asserts that the order-in-original dated 27.08.2018 was not received by the petitioner. No doubt, the appeal filed by the petitioner was time barred but in the facts of the case, in our considered view, the appeal of the petitioner ought to be decided on merits rather dismissing the same on the ground of delay.

In view of the above and having regard to the facts of the case, we condone the delay occurred in filing the appeal and remit this matter to the Commissioner (Appeals), Central Goods And Service Tax, Jaipur, for its decision on merits. The parties to appear before him on 18.11.2019. The Commissioner (Appeals), Central Goods And Service Tax, Jaipur, shall decide the appeal on merits.

The writ petition accordingly stands disposed of. This also disposes of the stay application.

(NARENDRA SINGH DHADDHA),J (MOHAMMAD RAFIQ),J

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