IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.23340 of 2015

M/s.Wabco India Limited,
Plant I, Plot No.3,
(SP) III Main Road,
Ambattur Industrial Estate,
Chennai - 600 058
Represented by its Chief Financial Officer ... Petitioner

Versus

The Joint Commissioner of Central Excise
Chennai - II Commissionerate
MHU Complex, Nandanam
Chennai - 600 035 ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in the Order in Original No.32/2014 dated 12.09.2014 and quash the same as it is violative of Rule 3(5) of the Cenvat Credit Rules, 2004.

For Petitioner : Mr.K.Vaitheeswaran

For Respondent : Mr.K.Mohana Murali
Senior Panel Counsel

ORDER

Heard Mr.K.Vaitheeswaran, learned counsel for the petitioner and Mr.K.Mohana Murali, learned standing counsel for respondent and with their consent, the writ petition is disposed of at the admission stage.

2.The petitioner has filed this writ petition challenging the order passed by the respondent dated 12.09.2014 whereby the service tax credit on the input services attributable to trading sales was demanded and a sum of Rs.17,23,011/- was directed to be recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(10) of the Central Excise Act, 1944. Apart from that, appropriate interest has also been demanded and a penalty of Rs.9,76,290/- has been imposed.

3.Though the petitioner had challenged this order by filing the writ petition, the petitioner has paid the entire amount without prejudice to their rights. The learned counsel for the petitioner pleads that the petitioner may be permitted to file an appeal against the impugned order before the Commissioner (Appeals). Admittedly, the period of limitation stipulated for filing the appeal has already over. Therefore, technically the Commissioner (Appeals) would not be in a position to entertain the appeal, as the appeal now presented would be barred by limitation and beyond condonable limitation by the Commissioner (Appeals).

4.Under normal circumstances, this Court exercising jurisdiction under Article 226 of the Constitution will not interfere in the matter of computation of limitation nor it would issue direction de hors the limitation stipulated under the statute. But in the instant case, two issues have prevailed upon for this Court to issue directions firstly that the writ petition was pending in this Court from July 2015 and the petitioner has paid the entire duty as well as the penalty imposed on them and all that they plead is they may be given an opportunity to contest the matter on merits. The second issue is that in paragraph 7 of the affidavit filed in support of the writ petition, they have stated that one Mr.Ramasubramaniam, who has the person handling the Central Excise and Service Tax matters in the petitioner organisation, had left the organisation during December 2014 and it is stated that he had not brought into the notice of the Management about the impugned order.

5.Thus, considering the peculiar facts and circumstances of the case, the Writ Petition is disposed of, giving liberty to the petitioner to file an appeal before the Commissioner (Appeals) and if such appeal is filed within a period of 30 days from the date of receipt of a copy of this order, the Commissioner (Appeals) shall entertain the appeal petition without reference to limitation. It is made clear that this order shall not be treated as a precedent. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sgl

To

The Joint Commissioner of Central Excise
Chennai - II Commissionerate
MHU Complex, Nandanam
Chennai - 600 035.

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CA(CO)
CA(22/06/2016)