IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19409 of 2016
&
W.M.P.No.16827 of 2016

P.Jothi .. Petitioner

Vs.

1. The Additional Commissioner of Central Excise
Goubert Avenue (Beach Road)
Puducherry

2. The Commissioner of Central Excise (Appeals)
No.26/1, Mahatma Gandhi Road
Chennai - 34 .. Respondents

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd respondent "Pre-deposit-Cum-Appeal Order No.20/2013 (P) (ST)(PD) dated 16.1.2013 and to quash the same as unsustainable, arbitrary and further direct the second respondent to restore the Appeal No.52/2010 (P)(ST) of the petitioner and to decide the same on merits since the petitioner had paid the entire Service Tax demanded amount of Rs.7,78,395.00

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.V.Sundareswaran

O R D E R

Heard Mr.K.Jayachandran, learned counsel for the petitioner and Mr.V.Sundareswaran, learned counsel for the respondents.

2. The petitioner has filed this writ petition challenging the order passed by the second respondent dated 16.01.2013 and to direct the second respondent to restore the petitioner's appeal petition on its file and consider the same on merits. By the impugned proceedings, the second respondent observed that the issued involved is whether the petitioner is

liable to pay the Service Tax on the various services rendered to the Neyveli Lignite Corporation Limited. Pointing out that the adjudicating authority has held that the petitioner has not paid the Service Tax in respect of the services rendered, the second respondent directed an amount of Rs.4,00,000/- as pre-deposit to be paid in cash on or before 06.02.2013 under Section 35F of the Central Excise Act, 1944, which has been made applicable to Service Tax in terms of Section 83 of the Finance Act, 1944. It is further observed that if the pre-deposit is not paid as ordered, the subject appeal shall stand dismissed automatically.

3. The learned counsel for the petitioner submitted that Neyveli Lignite Corporation has already paid the Service Tax of Rs.7,78,935/- and it has been informed to the petitioner on 20.02.2015 by letter sent by the Deputy General Manager, Finance for Neyveli Lignite Corporation Limited. Along with the said letter, the copy of the payment challan No.15027 dated 06.02.2015 was also enclosed. The said letter dated 20.02.2015 and the copy of the challan are enclosed in the typed-set of papers.

4. In the light of the above, there will be a direction to the second respondent to verify the correctness of the submission made by the petitioner and if necessary, call for information from the Commissionerate at Pondicherry to whose credit the amount has been paid by the Neyveli Lignite Corporation. On being satisfied that there is proof of payment of Service Tax, the second respondent is directed to consider the appeal filed by the petitioner on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.
gpa

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To
1. The Additional Commissioner of Central Excise
Goubert Avenue (Beach Road), Puducherry

2. The Commissioner of Central Excise (Appeals)
No.26/1, Mahatma Gandhi Road, Chennai - 34

+ 1 cc to Mr.K.Jayachandran, Advocate SR 35139

gj(co)
prk13/7

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