IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.40401 of 2016
and
W.M.P.No.34472 of 2016

V.Venkatesh ... Petitioner

Vs.

Assistant Commissioner of Service Tax,
Division-III,
Service Tax II Commissionerate,
Newry Towers,
Anna Nagar, Chennai-600 040 ... Respondent

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the respondent in his proceedings leading to passing of the order in Original 5/2016, dated 31.05.2016, and quash the same.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.S.R.Sundar,
Senior Panel counsel

ORDER

Heard Mr.S.Sathiyanarayanan, the learned counsel for the petitioner and Mr.S.R.Sundar, the learned Senior Panel Counsel, who accepts notice on behalf of the respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged the order passed by the respondent being Order-in-Original No.5 of 2016, dated 31.05.2016, in and by which, the demand made in the show cause notice for payment of service tax amounting to Rs.1,51,108/- has been confirmed, apart from confirming the proposal demanding interest and penalty.

3. As against the impugned order, the petitioner has an effective remedy of filing an appeal before the Commissioner (Appeals). There is no satisfactory explanation in the affidavit filed in support of the writ petition as to why the petitioner has not availed such a remedy. The settled legal position is that in Taxation matters, the petitioner should not be permitted to bypass the appeal remedy, as the appeal remedy available under the Act is both effective and efficacious. The points urged by the petitioner in the writ petition are all factual issues, which have to be agitated before the authority concerned. Therefore, the writ petition is held to be not maintainable. Accordingly, the writ petition is dismissed. However, liberty is granted to the petitioner to file appeal before the Commissioner of Appeals, if so advised. The registry is directed to return the Original impugned order.

4. The writ petition is dismissed with the above observation. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Assistant Commissioner of Service Tax,
Division-III,
Service Tax II Commissionerate,
Newry Towers,
Anna Nagar, Chennai-600 040.

2.The Section Officer,
Current Section/Writ A.E.,
High Court, Madras 104.

+1cc to Mr.S.Sathiyanarayanan, Advocate, S.R.No.66513
+1cc to Mr.S.R.Sundar, Advocate, S.R.No.66552

W.P.No.40401 of 2016

RSK(CO)
CA(22/12/2016)