

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.9273 and 9274 of 2016

and

W.M.P.Nos.8241, 8242 and 8243 of 2016

R.Sundaramoorthy
No.C-3, Palmirah Street,
Block - 18,
Neyveli - 607 803. ... Petitioner in both W.Ps.

Vs.

- 1.The Additional Commissioner of
Central Excise,
Gubert Avenue (Beach Road),
Pondicherry.
- 2.The Commissioner of Central Excise
(Appeals),
No.26/1, Mahatma Gandhi Road,
Chennai - 600 034.
- 3.The Assistant Commissioner of
Central Excise,
No.1, Vallalar Nagar,
Manjakuppam,
Cuddalore.
- 4.The Chief General Manager (Finance),
Corporate Office,
M/s.Neyveli Lignite Corporation,
Neyveli. ... Respondents in both W.Ps

Prayer:

W.P.No.9273 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the order in Original No.27/2010 (ST) dated 12.01.2010 passed by the first respondent with consequent recovery proceedings of the third respondent

C.No.IV/16/STC/189/2010-Adj dated 27.09.2011 and quash the same as non est, arbitrary and unsustainable in view of the payment of total service tax amount of Rs.12,33,617/- together with interest and penalty of Rs.5,000/- demanded u/s.77 of the Finance Act and 25% of penalty amount of Rs.12,33,617/- demanded under section 78 of the Finance Act.

W.P.No.9274 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the order in Appeal No.10/2013 (P) - Appeal No.174/2010 (P) dated 11.02.2013 and quash the same as bad in law in as much as there is failure in not extending the statutory benefit to pay 25% of penalty.

For Petitioner : Mr.K.Jayachandran

For Respondents: Mr.V.Sundareswaran

C O M M O N O R D E R

In W.P.No.9273 of 2016, the petitioner has sought for issuance of a writ of certiorari to call for the records relating to the Original Order in No.27/2010 (ST) dated 12.01.2010 passed by the first respondent with consequent recovery proceedings of the third respondent dated 27.09.2011 and to quash the same in view of the payment of total service tax of Rs.12,33,617/- together with interest and penalty of Rs.5,000/- demanded u/s.77 of the Finance Act and 25% of penalty of Rs.12,33,617/- demanded u/s.78 of the Finance Act.

2. In W.P.No.9274 of 2016, the petitioner has sought for issuance of a writ of certiorari to call for the records relating to the order in Appeal No.10/2013 (P) - Appeal No.174/2010 (P) dated 11.02.2013 and to quash the same in as much as there is failure in not extending the statutory benefit to pay 25% of penalty.

3. Mr.V.Sundareswaran, the learned standing counsel appearing for the respondents, submitted that since the petitioner has got an appeal remedy before the CESTAT to challenge the order passed in Appeal No.10/2013 (P) - Appeal No.174/2010 (P) dated 11.02.2013, W.P.No.9274 of 2016 deserves to be rejected on that ground.

4. Mr.K.Jayachandran, the learned counsel appearing for the petitioner, submitted that three weeks time may be granted to the petitioner to challenge the impugned order before the CESTAT.

5. In view of the submissions made by the learned counsel on either side and since an appeal remedy is available to the petitioner, W.P.No.9274 of 2016 filed against the impugned order dated 11.02.2013 is rejected and liberty is granted to the petitioner to challenge the impugned order dated 11.02.2013 within a period of three weeks from the date of receipt of a copy of this order. The CESTAT is directed to decide the matter in accordance with law.

6. The learned counsel for the petitioner submitted that in view of the order passed in W.P.No.9274 of 2016, no order needs to be passed in W.P.No.9273 of 2016.

Accordingly, both the writ petitions are disposed of. No costs. Registry is directed to return the original impugned order dated 11.02.2013 to the learned counsel for the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional Commissioner of Central Excise,
Gubert Avenue (Beach Road),
Pondicherry.

2.The Commissioner of Central Excise (Appeals),
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3.The Assistant Commissioner of Central Excise,
No.1, Vallalar Nagar,
Manjakuppam,
Cuddalore.

4.The Chief General Manager (Finance),
Corporate Office,
M/s.Neyveli Lignite Corporation,
Neyveli.

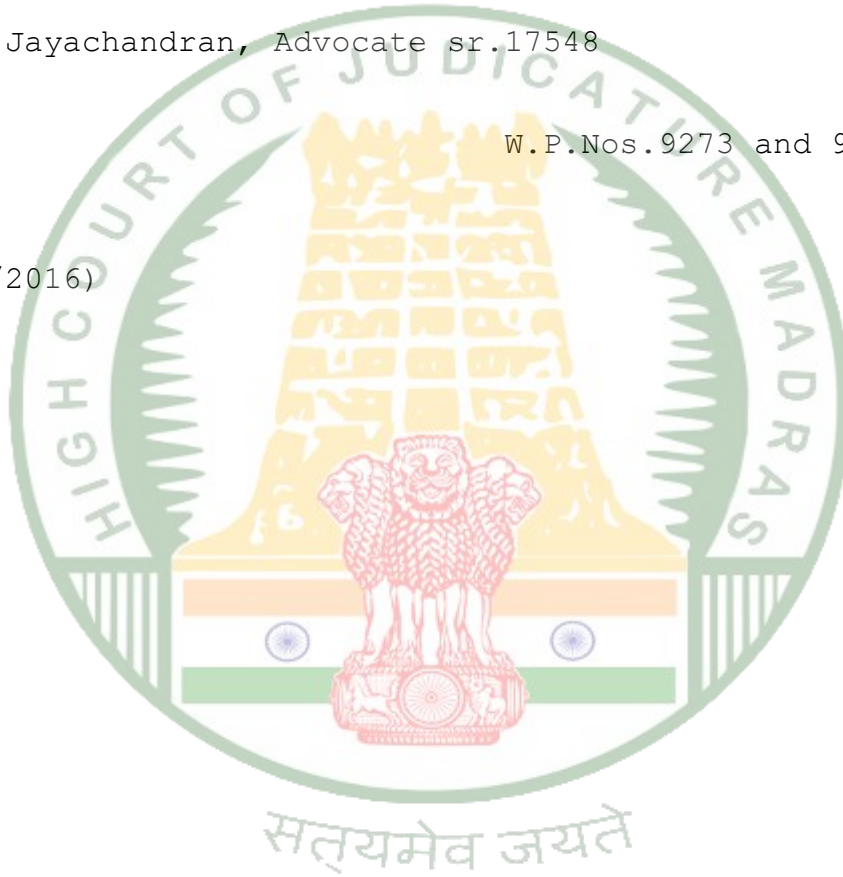
Copy to

The Section Officer,
ER Section Officer,
High Court,
Madras.

+lcc to K.Jayachandran, Advocate sr.17548

W.P.Nos.9273 and 9274 of 2016

sns (CO)
srg (21/03/2016)



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