IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8553 of 2017
and
WMP.No.9345 of 2017

M/s.Softech Infinium Solutions Limited
A Company incorporated under the
Companies Act, 1956
29 Precision Plaza, 397, Anna Salai,
Teynampet, Chennai-600 018.
Rep. By its Director
Mr.Gopi Narayanan Yadav ... Petitioner

Vs.

1.The Principal Commissioner
Office of the Principal Commissioner
of Service Tax, Service Tax I
Commissionerate, Newri Towers
No.2054-I, II Avenue, Anna Nagar
Chennai-600 040.

2.The Commissioner of Service Tax - II
Service Tax II Commissionerate
Division III, Newri Towers
No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.

3.The Superintendent, Division III
Range-E, Office of the Assistant
Commissioner of Service Tax
Service Tax II Commissionerate
Division III, Newri Towers
No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.

4.The Supt. of Service Tax
(Survey, Intelligence & Research - Gr.I)
O/o of Commissioner of Service
Tax, SIR CELL, No.2054, 3rd Floor,
Newry Tower, 1st Block
12th Main Road, Anna Nagar
Chennai-600 040. ...Respondents

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 and quash the impugned order in C.No.IV/09/65/2015-STC-II Adjun., dated 20.01.2017, passed by the first respondent.

For Petitioner :Mr.Yogesh Kannadasan

For Respondents:Mr.A.P.Srinivas
Standing Counsel

O R D E R

This writ petition is filed challenging the order in original dated 20.01.2017, wherein and whereby, the petitioner was called upon to pay the service tax of Rs.3,24,37,563/- and equal amount of penalty as well as other sums as referred to, in the impugned order.

2. Though the learned counsel appearing for the petitioner sought to maintain this writ petition before this Court by contending that the same was passed beyond the period of limitation and also on the ground of want of jurisdiction, this Court is of the view that the facts and circumstances of the present case would indicate that the above points raised certainly require deep appreciation of the facts and circumstances, which in my considered view, can be gone into and decided by the Appellate Forum, since such forum is also a fact finding forum. The question of jurisdiction and the limitation raised by the petitioner herein is not a simple question of law and on the other hand, it is a mixed question of law and fact, which, in my considered view, can be gone into by the appellate forum as well. Moreover, it is well settled that in cases involving fiscal nature, availing of statutory appellate remedy has to be first exhausted and the party cannot come directly to this court and file a petition under Article 226 of the Constitution of India. At this juncture, it is useful to refer to the following decisions:-

1) M/s.Nivaram Pharma Private Limited, rep. By its Director Sardarmal M.Chordia, Madras -vs- The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others reported in (2005) 2 MLJ 246(DB).

2) United Bank of India -vs- Satyawati Tondon and others reported in (2010) 8 SCC 110.

3) Raj Kumar Shivahare -vs- Assistant Director, Directorate of Enforcement and Another reported in (2010) 4 SCC 772.

4) Metal Weld Electrodes -vs- CESTAT, Chennai reported in 2014 (299) ELT 3 DB.

3.It is held in those cases that when an alternative remedy is available, more particularly, in the cases of fiscal nature, invoking of the jurisdiction under Article 226 of the Constitution of India, is not permissible. When the petitioner is having an alternative remedy of appeal to file the appeal before the CESTAT, it is for them to file such appeal and canvass all the points. This Court exercising discretionary jurisdiction under Article 226 of the Constitution of India, is not inclined to entertain this writ petition only on the reason of availability of alternative remedy.

4. Accordingly, this writ petition is dismissed with liberty to the petitioner to approach the Appellate Tribunal and file the statutory appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Yogesh Kannadasan, Advocate Sr.21458
+1cc to Mr.A.P.Srinivas, Advocate Sr.22322

W.P.No.8553 of 2017

sai[co]
srg 19/04/2017