IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.30991 of 2017
&
W.M.P.No.33955 of 2017

M/s.The Ambur Co-op. Sugar Mills Ltd.,
Rep. by its Managing Director
Shri.J.Hema Salomi
Vadapudupet - 635 812
Ambut Taluk
Vellore District ... Petitioner

vs

The Additional Commissioner of Central Excise
Chennai III Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034 ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarif to call for the records pertaining to the impugned order in original no.12/2016 (ST) dated 07.04.2016 passed by the respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.A.P.Srinivas
Senior Panel Counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel for the respondent.

2. In the light of the limited issue involved in this writ petition, the same is taken up for disposal at this stage.

3.The petitioner is a Co-operative Sugar Mill and aggrieved by an order passed by the Additional Commissioner of Central Excise, Chennai III, Commissionerate dated 07.04.2016, by which the premium earned by the petitioner on account of transfer of export quota to other sugar mills has been treated as a service to fall within the ambit of 'Business Auxiliary Service' and service tax has been demanded from the petitioner apart from demanding interest and imposing penalty. The petitioner has raised a contention that the nature of transaction done by the petitioner is sale and by treating this transaction as sale of goods, the petitioner has remitted Value Added Tax by filing returns before the concerned commercial tax officer. Therefore, it is submitted that the sale cannot be treated as a service to fall under the category of 'Business Auxiliary Service'. Further it is submitted that the extended period of limitation cannot be invoked, as there is no specific plea raised by the parties to show that there has been suppression and in paragraph 22 of the impugned order, there is no specific finding as to what is the suppression which has been made by the petitioner. To sustain the contention that notice issued by the respondent does not allege any willful misstatement or suppression, the petitioner placed reliance on the decision of the Hon'ble Supreme Court in Uniworth Textiles Ltd., Vs. CCE, Raipur, reported in 2013 (288) ELT 161 (SC). It is further submitted that the petitioner mill is under the control of Tamil Nadu Co-operative Sugar Federation Limited and the Managing Director is appointed by the Government of Tamil Nadu and therefore, there can be no intention to evade duty and the larger period could not have been invoked. Reliance has also been placed on the decision of the Hon'ble Supreme Court in Tamil Nadu Housing Board Vs. Collector of Central Excise, Madras reported in 1994 (74) ELT 9 (SC).

4. Admittedly, as against the impugned order, the petitioner has appellate remedy before the Commissioner (Appeals), Chennai 34. Appeal should have been filed within 60 days from the date of receipt of copy of the order. If the petitioner had filed the appeal instead of the writ petition, the appeal would have been rejected as time barred as the Commissioner (Appeals) has no jurisdiction to condone the delay beyond the condonable limit prescribed under the Act.

5. However, in the instant case, this Court is of the view that the petitioner can be granted opportunity to file an appeal by taking into consideration peculiar facts of the case. Firstly, the petitioner is a Cooperative Sugar Mill registered under the Tamil Nadu Cooperative Societies Act. Secondly, the activities of the sugar mill is supervised by the Tamil Nadu Co-operative Sugar Federation Limited. That apart, the day-to-day administration of the petitioner's sugar Mill vest with the Government of Tamil Nadu and is under the Managing Director, who

has been appointed by the Government of Tamil Nadu, who is in the cadre of Joint Registrar in the Tamil Nadu Co-Operative Service. That apart, the entire tax, as quantified in the impugned Assessment order and penalty of Rs.10,000/-, have been remitted by the petitioner. Further it is submitted on affidavit that on account of frequent change in officers, the petitioner could not immediately take steps to file an appeal before the Commissioner (Appeals). The above distinct and distinguishing factors call for indulgence to be granted to the petitioner to file an appeal before the Commissioner (Appeals), Chennai 34.

Accordingly, the writ petition is disposed of with liberty to the petitioner to file an appeal before the Commissioner (Appeals), Chennai - 34 within 30 days from the date of receipt of a copy of this order. If such an appeal is filed, the Commissioner (Appeals) is directed to entertain the appeal without reference to limitation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

gpa

To

The Additional Commissioner of Central Excise
Chennai III Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034

+ 1 cc to Mr.Hari Radhakrishnan Advocate,SR.86986

+ 1 cc to Mr.A.P.Srinivas Advocate,SR.86709

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nr 26/12/2017