IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos. 11367 to 11370 of 2017
and
WMP.Nos. 12312 to 12323 of 2017

The Commissioner of Mettur Municipality,
Mettur Municipality,
Mettur.

...Petitioner
(in WP Nos.11367 to 11370 of 2017)

Versus

1. The Assistant Commissioner of Central Excise & Service Tax,
Salem – II Division, No.2, Valmiki Street,
Subramania Nagar, Salem – 636 005.

2. The Superintendent of Central Excise,
Mettur I – Range,
Mettur R.S. – 636 402.

3. The Branch Manager,
State Bank of India Limited,
Mettur.

... Respondents
(in WP.No.11367 of 2017)

1. The Additional Commissioner of Central Excise & Service Tax
No. 1, Foulks Compound,
Anai Road, Salem – 636 001.

2. The Superintendent of Central Excise,
Mettur I – Range,
Mettur R.S. – 636 402.

3. The Branch Manager,
State Bank of India Limited,
Mettur.

... Respondents
(in WP.Nos.11368 & 11370 of 2017)

1. The Assistant Commissioner of Central Excise & Service Tax,
   Salem - II Division, Theerthamalai Arcade,
   Near New Bus Stand, IInd Cross,
   Salem - 636 004.

2. The Superintendent of Central Excise,
   Mettur I - Range,
   Mettur R.S. - 636 402.

3. The Branch Manager,
   State Bank of India Limited,
   Mettur.

... Respondents
(in WP.No.11369 of 2017)

Prayer:

Writ Petition No. 11367 of 2017 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the order of the 1st Respondent in Order-in-Original Sl.No.07/2010 (AC - Salem II) dated 30.08.2010 and the records of the 2nd Respondent in consequential notice in O.S.No. 209/2017 dated 20.03.2017 and quash the same.

Writ Petition No. 11368 of 2017 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the order of the 1st Respondent in Order-in-Original Sl.No.10/2011 (ADC) dated 02.05.2011 and the records of the 2nd Respondent in consequential notice in O.S.No. 209/2017 dated 20.03.2017 and quash the same.

Writ Petition No. 11369 of 2017 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the order of the 1st Respondent in Order-in-Original Sl.No.12/2014 Slm II Dvn dated 20.05.2014 and the records of the 2nd Respondent in consequential notice in O.S.No. 209/2017 dated 20.03.2017 and quash the same.

Writ Petition No. 11370 of 2017 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarai, to call for the order of the 1st Respondent in Order-in-Original Sl.No. 20/2012 (ST-ADC) dated 31.07.2012 and the records of the 2nd Respondent in consequential notice in O.S.No. 209/2017 dated 20.03.2017 and quash the same.

For Petitioner : Mr. A.R.L. Sundaresan
Senior Counsel
for M/s.A.L. Gandhimathi

For Respondents : Mr.V.Sundareswaran
Standing Counsel

COMMON ORDER

Mr.V.Sundareswaran, learned Standing Counsel, takes notice for the respondents 1 and 2 in WP.Nos.11367 to 11370 of 2017. The third respondent Bank is formal party, as they are only the garnishee. The petitioner is aggrieved against the order in original dated 30.08.2010, 02.05.2011, 20.05.2014 and 31.07.2012, and a consequential demand notice dated 20.03.2017.

2. Heard the learned Senior Counsel appearing for the petitioner and the learned standing counsel appearing for the respondents 1 and 2.

3. It is seen that as against the order in original passed by the first respondent, a statutory appeal remedy is available to the petitioner before the First Appellate Authority, which the petitioner has not availed so far. Only when the consequential demand notice is issued, now, the petitioner has rushed to this Court and filed this Writ Petition.

4. The learned Senior Counsel appearing for the petitioner submitted that the appeal was not filed in time, since there was a change of officer in the petitioner's Municipality, and that the previous officer has not taken steps to file such appeals in time. Apart from saying so, the learned Senior Counsel submitted that stay has been granted by the Hon'ble Supreme Court against recovery prior to 30.09.2011 and therefore, the petitioner thought that the respondents 1 and 2 will not make any demand. However, he fairly conceded that the Interim Order granted by the Hon'ble Supreme Court was in respect of the cases filed by some other assessees and not the petitioner. He further submitted that as against the total demand, the petitioner so far paid Rs.13,64,000/- which is, more than 60% of the Tax demand.

5. The learned counsel for the respondents 1 and 2 submitted that when the petitioner is having an alternative statutory appellate remedy to file an appeal before the First Appellate Authority, they can very well go before the said authority and raise all the contentions. He has also submitted that since the petitioner has admittedly paid more than 60% of the tax liability, the First Appellate Authority will also consider the grant of Interim Stay, pending disposal of the appeal.

6. Upon hearing the learned counsel appearing on either side, this Court is of the view that the petitioner has to only seek for alternative remedy before the First Appellate Authority and canvass all the points raised in this writ petition. As it is admitted that the petitioner has also paid more than 60% of the tax demand, there cannot be any difficulty for the petitioner to seek for an Interim Stay of further recovery,

pending disposal of the first appeal. Accordingly, without expressing any view on the merits of the impugned order, these writ petitions are disposed of, by granting liberty to the petitioner to file first appeal before the First Appellate Authority, within a period of four weeks from the date of receipt of a copy of this order. On receipt of such appeals, the First Appellate Authority shall consider the same on its own merits and in accordance with law, without reference to the question of limitation. It is open to the petitioner to raise all the points before the First Appellate Authority. Since the petitioner has paid 60% of the tax Liability, the respondents are directed to raise the bank attachment order. Needless to say that it is open to the respondents 1 and 2 to proceed against the petitioner pursuant to the order to be passed by the Appellate Authority, in a manner known to law. The registry is directed to return the original orders of the petitioner forthwith. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mk/rsi

To

1. The Assistant Commissioner of Central Excise & Service Tax,
   Salem - II Division, No.2, Valmiki Street,
   Subramania Nagar, Salem - 636 005.

2. The Superintendent of Central Excise,
   Mettur I - Range,
   Mettur R.S. - 636 402.

3. The Branch Manager,
   State Bank of India Limited,
   Mettur.

4. The Additional Commissioner of Central Excise & Service Tax,
   No. 1, Foulks Compound,
   Anai Road, Salem - 636 001.

5. The Assistant Commissioner of Central Excise & Service Tax,
Salem - II Division, Theerthamalai Arcade,
Near New Bus Stand, IInd Cross,
Salem - 636 004.

+1cc to Mr.V. Sundareswaran, Advocate Sr. 36557

+4cc to M/S.AL. Ganthimathi, Advocate Sr. 36488 to 36491

W.P.Nos. 11367 to 11370 of 2017
and
WMP.Nos. 12312 to 12323 of 2017

RV(CO)
VR(4/5/2017)