IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.31705 of 2017 and
W.M.P.No.34850 of 2017

Fifth Avenue Sourcing (P) Limited,
Represented by Mr.J.Balakrishnan,
Director-Finance, Old No.59, New No.32,
Burkit Road, T.Nagar, Chennai - 17. ... Petitioner

Vs.

Commissioner of Service Tax - II
Newry Towers, No.2054-1,
II Avenue, Anna Nagar,
Chennai - 600 040. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to Order in Original No.CHN-SVTAX-002-COM-50 & 51-2016-17 dated 27.03.2017, in C.No.IV/09/256/2014-STC-II.Adj passed by the Respondent, and to quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.K.Ravi
Senior Panel Counsel

O R D E R

Mr.Joseph Prabakar, the learned counsel appearing for the petitioner and Mr.K.Ravi, the learned Senior Panel Counsel appearing for the respondent.

2.The petitioner is before this Court challenging an order in original dated 27.03.2017 passed by the respondent, by which, the respondent has confirmed the demand in the show cause notice dated 13.02.2015 and levied Service Tax of Rs.2,03,38,244/- under Section 73(2) of the Finance Act, 1994 read with Section 73(1) of the Act; ordering payment of interest under Section 75 on the aforesaid amount and imposed penalty of Rs.20,00,000/-. Further, the respondent confirmed the statement of demand of Rs.1,96,12,548 and ordered payment of interest and imposed penalty of Rs.19,00,000/-. Admittedly, as against the impugned order the petitioner has an effective alternative remedy before the CESTAT and without availing the same, the petitioner is before this Court.

3.When this question was posed to the learned counsel for the petitioner, it is pointed out that the respondent has dismissed the petitioner's appeal on the sole ground that the petitioner has not produced records, whereas all records are available. Therefore, the petitioner would state that one more opportunity may be granted to the petitioner to go before the respondent and produce all the necessary documents and contest the matter on merits. From the findings recorded in paragraph 4.16 of the impugned order, it prima-facie appears that the petitioner's case solely rested upon the order in original dated 31.01.2014 passed by the Additional Commissioner in respect of a group concern of the assessee and an order passed by the CESTAT in a miscellaneous application dated 08.01.2014 in the assessee's own case. The respondent while considering the said orders observed that the factual issue requires to be examined as to whether the assessee receives consideration from foreign buyer or from Indian garment exporters or from both to arrive at a decision. With regard to the other order passed by the CESTAT in the assessee's own case, the respondent stated that it was an interim order granted by the CESTAT based on the documents produced for the period from April 2007 to September 2011.

4.In the light of the above, the question would be as to whether there were any documents placed by the petitioner or not and if documents were available, whether they were sufficient to show that the case requires to be decided in favour of the petitioner are all factual issues which the petitioner has to necessarily agitate before the Tribunal. The Tribunal being a fact finding authority is entitled to re-examine and examine the facts which may be placed before it and then come to a conclusion. Merely because there will be a burden on the assessee to make pre-deposit cannot be a reason to byepass the appeal remedy available under the Act.

5.Thus for the above reasons, the Writ Petition is dismissed as not maintainable. However, it is open to the petitioner to file an appeal before the CESTAT. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

cse/msm

To

Commissioner of Service Tax - II
Newry Towers, No.2054-1,
II Avenue, Anna Nagar,
Chennai - 600 040.

+1cc to Mr.K.Ravi, Advocate SR.No.87196
+1cc to Mr.Joseph Prabakar, Advocate SR.No.87535

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SR(CO)
GN(28/12/2017)