IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.01.2017
CORAM:
THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
W.P.NO.236 OF 2017
AND WMP NOS.253 AND 254 OF 2017

M/s.Bharathi Builders and Constructions
Represented by S.Aravindakshan
Proprietor
No.108, Harishree Saraswathi Nagar,
Marappalam, Madukkarai,
Coimbatore - 641 105. .. Petitioner

Vs.

The Deputy Commissioner Central Excise
Coimbatore III Division
1441, Elgi Building,
Coimbatore - 641 018. .. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records comprised in Recovery Order No.C.No.V/MRS/15/32/2012 dated 28.10.2016 on the file of the respondent and quashing the same and consequently direct the respondent to pass an appropriate order after the disposal of the application in Diary Number 411882016 dated 11.11.2016 by the CESTAT.

For Petitioner : Ms.Naveena. D
For Respondent : Mr.A.P.Srinivas

O R D E R

1. Issue notice. Mr.A.P.Srinivas, learned counsel, accepts notice on behalf of the respondent. With the consent of learned counsel for the parties, the writ petition is taken up for hearing and final disposal.

2. By virtue of this writ petition, a direction is sought for quashing the recovery order, dated 28.10.2016, and for a consequential direction for consideration, of its application, dated 11.11.2016, pending before the Customs, Excise and Service Tax Appellate Tribunal (in short "CESTAT").

3. The brief facts, which are required to be noticed for consideration of the present writ petition, are as follows:-

3.1. The petitioner was issued a show cause notice, dated 21.02.2011, for non-payment of service tax. In the show cause notice, penalty was also proposed, under Section 78 of the Act. The petitioner claims that a reply was filed, to the show cause notice, which, after consideration, led to the passing of the order-in-original, dated 10.02.2012. By virtue of this order, the demand was confirmed.

3.2. The petitioner carried the matter in appeal. The appeal was however dismissed vide order dated 29.10.2012. The petitioner, preferred a Second Appeal, to the CESTAT. The appeal was accompanied by an application, for waiver of pre-deposit. Via order dated 01.08.2013, the CESTAT directed the petitioner to pay a sum of Rs.12,15,832/-. It was indicated in the order, that if, the said amount is deposited, recovery would stand stayed, during the pendency of the appeal.

4. Admittedly, the petitioner failed to deposit the entire amount. The contention of the petitioner, is that, a sum of Rs.8,16,281/- was deposited; a fact, which its counsel was unable to convey to the CESTAT, as he was not present at the hearing held on 31.12.2013. Resultantly, the CESTAT dismissed the appeal of the petitioner on 31.12.2013 for failure to pay the pre-deposit amount.

5. Evidently, since then, the petitioner has paid the entire service tax, amounting to Rs.12,15,832/-, along with penalty, amounting to Rs.12,20,832/-, in consonance with order dated 10.2.2012, passed by the 1st appellate authority.

5.1. The only outstanding dues qua the petitioner, as claimed by the Revenue, are towards interest. The said amount has been quantified at Rs.10,02,568/- The impugned recovery notice has, thus, been issued only qua the interest amount.

6. The petitioner, apparently, has also moved an application, for restoration of the appeal, which was filed before the CESTAT, wherein, these grounds have been articulated.

7. Therefore, having regard to the aforesaid facts and circumstances, the writ petition is disposed of, with a direction to the CESTAT, to consider the application filed by the petitioner for restoration of the appeal. The CESTAT, after hearing the petitioner, will pass an order in accordance with law.

7.1. Consequently, pending consideration of the petitioner's application, for restoration of the appeal by CESTAT, there shall be a suspension of the order of recovery, dated 28.10.2016.

7.2. Needless to say, CESTAT will issue a notice of hearing, to the petitioner, qua its application, for restoration of the appeal.

8. The CESTAT is requested to dispose of the application for restoration of appeal, on or before 15.03.2017. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TK

To

The Deputy Commissioner Central Excise
Coimbatore III Division
1441, Elgi Building,
Coimbatore - 641 018.

+1 cc to Mr.S.Durairaj Advocate sr 1006

W.P.NO.236 OF 2017

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