IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01-02-2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.2404 of 2017
and W.M.P.Nos.2385 and 2386 of 2017

M/s. Chitra Contractor
Represented by T. Chitra, Proprietrix
6/15, Malaisamy Kovil Veethi
Madukkarai
Coimbatore - 641 105 .. Petitioner

Vs.

The Deputy Commissioner Central Excise
Coimbatore III Division
6/7 ATD Street, Race Course Road
Coimbatore - 641 018 .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records comprised in Recovery Order No.C.No.V/MRS/15/30/2012 STC ADJN dated 06-05-2016 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 applications in Diary Number 412182016 Diary Number and Diary Number 412702016 Diary Number by the Honourable CESTAT and pass orders.

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For Petitioner : Ms.D.Naveena
For Respondents : Mr.A. P. Srinivas, Senior Standing Counsel

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ORDER

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

2. By virtue of this writ petition, challenge is laid to the order dated 06-05-2016. The impugned order is a notice of recovery issued under Section 87 of the Finance Act, 1994.

3. In order to adjudicate upon the instant writ petition, the following broad facts need to be noticed:

3.1. The petitioner being aggrieved by two orders in original bearing Nos.CMB-CEX-000-250-12 and CMB-CEX-000-251-12, dated 26-10-2012, preferred appeals with the Customs, Excise and Service Tax Appellate Tribunal ('the Tribunal' in short). These appeals were numbered as ST/40400/2013-DB and ST/40401/2013-DB.

3.2 The petitioner had filed applications for condonation of delay and for stay in the aforementioned appeals, preferred before the Tribunal.

3.3 By an order dated 18-04-2013, the Tribunal not only condoned the delay, but also granted a waiver of pre-deposit of interest and penalty and recovery thereof, during the pendency of the appeal subject to the petitioner depositing a sum of Rs.9,20,818/- (Rupees Nine lakhs twenty thousand eight hundred eighteen only). The Tribunal directed a compliance report to be filed on 07-06-2013.

4. Admittedly, the petitioner could not comply with the condition stipulated by the Tribunal vide its order dated 18-04-2013. Accordingly, the Tribunal by an order dated 07-06-2013, dismissed the appeal for want of compliance of the provisions of Section 35F of the Central Excise Act, 1944.

5. The record shows that the petitioner has preferred applications for restoration of appeal. Copies of these applications are appended at Page Nos.45 to 47 and 58 to 60 of the typed set of documents. The petitioner claims that as against the total demand of Rs.27,01,636/-(Rupees Twenty Seven lakhs One thousand Six hundred thirty six only) which includes service tax, interest and penalty, she has deposited with the Revenue a sum of Rs.18,62,390/-(Rupees Eighteen lakhs Sixty Two thousand three hundred ninety only). In effect the stand of the petitioner is that 69% of the total liability already stands deposited with the Revenue. The petitioner is, thus, aggrieved by the fact that pending disposal of the applications for restoration of the aforementioned appeals, the impugned recovery notice has been issued.

6. I have heard Ms. D. Naveena, learned counsel appearing for the petitioner, as also, Mr. A.P. Srinivas, learned Senior Standing counsel appearing for the respondent.

7. Having regard to the fact that money equivalent to 69% of the tax demand has already been deposited, I am of the view that the petitioner should get a hearing in other words, a look-in with regard to the applications filed before the Tribunal, concerning the restoration of the appeals, which were dismissed by the Tribunal, vide order dated 07-06-2013.

8. Accordingly, the Tribunal is requested to consider and dispose of the applications for restoration as, expeditiously, as possible. However, pending disposal of the applications for restoration, the operation of the impugned order shall remain stayed. It would be open to the Tribunal, if it comes to the conclusion that the appeal ought to be restored, to continue the stay qua the impugned order, if it deems it necessary in the given facts and circumstances of the case.

9. The writ petition is disposed of, in terms of the aforementioned directions. The connected miscellaneous petitions shall stand closed. Costs made easy.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To

1. The Deputy Commissioner Central Excise
   Coimbatore III Division
   6/7 ATD Street, Race Course Road
   Coimbatore - 641 018
2. The Assistant Commissioner Central Excise,
   Central Excise Appellate, Tribunal, Coimbatore III Division,

+1 CC to Mr. S. Durairaj, Advocate sr 6326

W.P.No.2404 of 2017

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