In the High Court of Judicature at Madras

Dated : 20.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25091 of 2017 & WMP.No.26528 of 2017

K.Gokulnath ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Office of the Assistant Commissioner
of GST & Central Excise, Erode - II,
Division No.81, Bharathi Nagar,
Soolai, Veerappan Chatram
Post, Erode-4.

2.The Deputy Commissioner, Office
of the Deputy Commissioner of
Customs, Central Excise &
Service Tax, Erode - II,
Division No.81, Bharathi Nagar,
Soolai, Veerappan Chatram
Post, Erode-4. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the 1st respondent in C.No.V/BAS/01/2017-ST-Adj dated 11.8.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.V.Sundareswaran, SPC

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel accepting notice for the respondents.

2. The petitioner is before this Court challenging an Order-in-Original passed by the first respondent dated 11.8.2017 confirming the demand raised in the notice dated 06.1.2017 and levying service tax under Section 73(2) of the Finance Act, 1994. Apart from that, penalty has been imposed under Sections 77(1)(a), 77(2) and 78 of the said Act. The first respondent also demanded appropriate interest as applicable on the service tax amount under Section 75 of the said Act.

3. The learned counsel for the petitioner has raised various factual and legal contentions challenging the impugned order.

4. At the outset, it has to be pointed out that the petitioner had subjected himself to the jurisdiction of the Authority concerned and responded to the show cause notice. The show cause notice has been adjudicated and a speaking order has been passed by the first respondent. As against the impugned order, the petitioner has an effective remedy of appeal before the Commissioner (Appeals-I, Coimbatore), Circuit Office at the office of the Commissioner of Central Excise, NO.1, Foulkes Compound, Anai Medu, Salem-1. I find no justifiable reasons for the petitioner to bypass such appeal remedy.

5. The petitioner has to necessarily avail the appeal remedy for more than one reason. Firstly, since the Statute namely the Finance Act is a special Statute and provides hierarchy of remedies, the Writ Court should not interfere at the very inception, when the Original Authority has adjudicated the matter. Secondly, the grounds canvassed by the petitioner would involve adjudication into disputed questions of fact. The adjudication cannot be done in a writ petition whereas the Commissioner (Appeals), being the First Appellate Authority, would be entitled to re-appreciate the factual matrix and take a decision in the matter. For the above reasons, this Court is not inclined to entertain this writ petition, but would leave it open to the petitioner to avail the appeal remedy.

6. In the result, the writ petition is dismissed as not maintainable, leaving it open to the petitioner to avail the appeal remedy, if so advised. No costs. Consequently, the above WMP is also dismissed.

20.9.2017

Internet : Yes

RS

T.S.SIVAGNANAM,J

RS

To

1.The Assistant Commissioner (CT), Office of the Assistant Commissioner of GST & Central Excise, Erode - II, Division No.81, Bharathi Nagar, Soolai, Veerappan Chatram Post, Erode - 638 004.
2.The Deputy Commissioner, Office of the Deputy Commissioner of Customs, Central Excise & Service Tax, Erode - II, Division No.81, Bharathi Nagar, Soolai, Veerappan Chatram Post, Erode - 638 004.

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