IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25678 of 2017

M/s.Atchaya Enterprises,
rep. by its Proprietor, Mr.A.Mohan,
80, Srinivasa Perumal Kovil 1st Street,
Periyathoppu, Manali,
Chennai 600 068. ... Petitioner

vs.

1. The Additional Commissioner,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai 600 101.

2. The Assistant Commissioner of Service Tax,
Service Tax - I Commissionerate,
Service Tax - I Division,
Newry Towers, First Floor,
Plot No.2054, 1st Block,
2nd Avenue, 12th Main Road,
Anna Nagar, Chennai 600 040. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the impugned order in original No.STC/6/2014-ADC (LTU) dated 25.02.2014 passed by the 1st respondent in C.No.IV/09/440/2011-STC/ADJ and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents: Mr.K.Ravi,
Senior Central Govt. Standing Counsel

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned order in original No.STC/6/2014-ADC (LTU) passed by the 1st respondent herein vide C.No.IV/09/440/2011-STC/ADJ, dated 25.02.2014.

2. According to the petitioner concern, it is registered with the Service Tax Department with Registration No.AOOPM6824ST001 to provide Erection, commissioning and installation service as defined in Section 65(39a) of the Finance Act, 1994. In the year 2010, the Audit Officers of the Department, scrutinized the petitioner's Books of Accounts, IT Returns, Balance Sheet, etc. pertaining to the years 2007-08, 2008-09, 2009-10. However, the petitioner was issued a show cause notice on 29.02.2012 on the ground that it has to pay a sum of Rs.19,92,075/- towards service tax. The petitioner contested the demand and produced Challan to prove that the main Contractor had paid service on the value, which was inclusive of value of service rendered by the petitioner. However, the Additional Commissioner, who adjudicated the case, passed an order-in-original vide No.STC/6/2014-ADC (LTU), dated 25.02.2014, confirming the demand for service tax for the said amount besides imposing penalty equal to the tax amount demanded i.e. Rs.19,92,075/-.

3. Pursuant thereto, the petitioner filed an appeal on 01.02.2016 to the Commissioner (Appeals) against the said order-in-original, dated 25.02.2014 to avoid initiation of recovery proceedings against it. The said appeal was rejected by the Commissioner (Appeals) as time-barred, vide order dated 02.09.2016. According to the Commissioner (Appeals), he had no power to condone the delay of more than one month after the expiry of statutory time limit of two months for filing an appeal in terms of Section 85(3A) of the Finance Act, 1994. Thereafter, the 2nd respondent vide letter dated 21.04.2017, demanded the petitioner to pay the amount of service tax with interest and penalty imposed as per the said order-in-original, immediately. Aggrieved by the same, the petitioner is before this Court.

4. Learned counsel for the petitioner represented that the petitioner had submitted service tax challans in respect of M/s.Tech Sharp Engineers (P) Ltd., Chennai and M/s.Gopal Engineering Works, Vishakapatnam. But, the authority on verification of the said challans, came to the conclusion that there is payment of service tax by the Contractors, but it could not be established as to whether the service tax in respect of the service rendered by the assessee to the above mentioned Contractors have been included in the demand made by them or not.

5. On the other hand, learned Senior Central Government Standing Counsel, contended that no document has been produced by the petitioner except a mere application and the petitioner did not chose to prefer an appeal within the time stipulated. Having failed to do so, without filing another appeal and

allowing time to expire, the act of the petitioner in approaching this Court on the ground that he has got records to establish his case, cannot be accepted. It is his contention that the petitioner having missed the bus, will have to pay the amount as determined by the adjudicating authority.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. Admittedly, the petitioner has not produced any document except the Challans evidencing payment of service tax by two Contractors. The adjudicating authority has rightly held that the Challans produced by the petitioner could not be taken into account for the purpose of establishing as to whether service tax in respect of the service rendered by the assessee to the above mentioned Contractors have been included in the payment made by them.

8. Since there are communications by two Companies mentioned supra, which have been produced by the petitioner in the additional typed set of papers and as the petitioner has undertaken to produce all the work orders and TIN Reference Number before the authority concerned, in order to prove that the service rendered by the petitioner has been taken note of and that service tax has been paid by the Contractors, this Court, in order to give an opportunity to the petitioner, interferes with the impugned order passed by the 1st respondent and remits the matter to the 1st respondent/Original authority for fresh consideration. The petitioner shall produce all the supporting documents before the Original Authority within a period of 15 days from the date of receipt of a copy of this order and on receipt of the same, the Original Authority shall hear the petitioner and pass a detailed order within a period of one month from the date of personal hearing of the petitioner.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.27092 of 2017 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional Commissioner,
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   1775, Jawaharlal Nehru Inner Ring Road,
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2. The Assistant Commissioner of Service Tax,
   Service Tax - I Commissionerate,
   Service Tax - I Division, Newry Towers,
   First Floor, Plot No.2054, 1st Block,
   2nd Avenue, 12th Main Road,
   Anna Nagar, Chennai 600 040.

3. The Section Officer, ER Section,
   High Court, Madras.

+ 1 cc to Mr. K. Ravi, Advocate SR.71156
+ 1 cc to Mr. Hari Radhakrishnan, Advocate SR.71154

W.P.No.25678 of 2017

RJ(CO)
EU(27/10/2017)