IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17377 of 2017
&
W.M.P.No.18871 of 2017

M/s.Victory Electricals Limited,
Rep. by its Managing Director,
Mr.Vaddiveni Mahindra,
No.850/64/B,T.H. Road,
Near Royal Enfield Limited,
Tiruvotiyur, Chennai 600 010. ... Petitioner

Vs.

1. Assistant Commissioner of Central Excise,
   Chennai-I, Commissionerate,
   No.459 (Old No.317), Anna Salai,
   Teynampet, Chennai - 600 018.

2. Deputy Commissioner of Central Excise,
   Chennai-I, Central Excise Building,
   No.459 (Old No.317), Anna Salai,
   Teynampet, Chennai - 600 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI quashing the impugned Order-in-Original No.11/2016 dated 20.12.2016 passed by the first respondent in their File No.C.No.V/15/85/70/2010-Adjn as it has been passed in clear violation of principles of Natural Justice.

For Petitioner : M/s.Cynduja Crishnan

For Respondents : M/s.R.Hemalatha,
Senior Panel Counsel

O R D E R

Heard M/s.Cynduja Crishnan, learned counsel for the petitioner and M/s.R.Hemalatha, learned Senior Panel Counsel for the respondents. With the consent on either side the writ petition itself is taken up for disposal.

2.This writ petition has been filed by the petitioner challenging an order passed by the first respondent in Order-in-Original No.11/2016 dated 20.12.2016. The petitioner filed a refund claim for Rs.8,36,170/- vide their letter dated 23.03.2010 before the second respondent on the ground that they had originally manufactured and cleared eight transformers to the Tamil Nadu Electricity Board on payment of duty on the value fixed as per the purchase orders. However, subsequently the Tamil Nadu Electricity Board had revised the value of the transformers to a lesser value which was as per the market value at the time of payment leading to excess payment of duty on the transformers cleared by them. The refund was sanctioned vide order dated 21.06.2010 by the second respondent. The Department filed an appeal before the Commissioner (Appeals) who by order dated 02.12.2013 allowed the appeal and the refund order was set aside.

3.Aggrieved by the decision of the Commissioner (Appeals), the petitioner preferred an appeal before the CESTAT and by order dated 10.07.2014 allowed the appeal of the petitioner and remanded the matter back to the authority to decide the case after considering the submission of the petitioner. On remand, the Commissioner allowed the appeal filed by the Department and set aside the order of refund. As against which, the petitioner has preferred an appeal before the Tribunal on 02.11.2015 and the same is pending. In the mean time, as there was no interim order granted by the CESTAT as against the order in appeal dated 27.07.2015 a show cause notice was issued to the petitioner calling upon the petitioner to explain as to why the amount of refund granted should not be recovered and why appropriate interim interest should not be levied. The petitioner submitted their objections and the impugned order has been passed.

4.Admittedly, the impugned order is an appealable order and if the petitioner is aggrieved they should file an appeal to the Commissioner (Appeals). On the other hand, if the petitioner is of the view that pending appeal before the Tribunal, the amount cannot be directed to be recovered, then the petitioner should move the Tribunal for appropriate interim directions. For both the above reasons, the petitioner is not justified in approaching this Court by way of this writ petition under Article 226 of the Constitution of India. Hence, the writ petition is held to be not maintainable and the same is dismissed. However, liberty is granted to the petitioner to file an appeal as against the impugned order or in the alternative move the CESTAT for appropriate interim directions.

5.With the above observations, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Assistant Commissioner of Central Excise,
   Chennai-I, Commissionerate,
   No.459 (Old No.317), Anna Salai,
   Teynampet, Chennai - 600 018.

2. The Deputy Commissioner of Central Excise,
   Chennai-I, Central Excise Building,
   No.459 (Old No.317), Anna Salai,
   Teynampet, Chennai - 600 018.

+1cc to Mr.S.Muthuvenkataraman, Advocate, S.R.No.48362
+1cc to M/s.R.Hemalatha, Advocate, S.R.No.48198

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CS V
CA(21/07/2017)