IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.No.17962 of 2017
&
W.M.P.Nos.19531 and 19532 of 2017

M/s.Shree Maruthi Road Carriers,
Represented by its Proprietor Shri Anil Singhal
New 78, Old 79, 2nd Floor,
Armenian Street, Chennai 600 001 ...Petitioner

Vs.

1.The Deputy Commissioner of Service Tax,
Service Tax I Division,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Commissioner of Service Tax (Appeals - I)
Office of the Commissioner of Service Tax (Appeals - II)
Newry Towers, 2054/1, II Avenue,
12th Main Road, Anna Nagar, Chennai 600 040.
...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to quash the impugned order-in-Appeal No.689/2016(STA-I) dated 20.12.2016 passed by the 2nd respondent and to direct the 2nd respondent to pass orders in accordance with law.

For Petitioner :: Ms.Cynduja Crishnan

For Respondents:: Mr.S.R.Sundar
Senior standing Counsel

O R D E R

Heard Ms.Cynduja Crishnan, learned counsel for the petitioner and Mr.S.R.Sundar, learned senior standing counsel for the respondents.

2. With the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

3. The petitioner has impugned the Order in Appeal No.689/2016 (STA-I) dated 20.12.2016. It is not in dispute as against the impugned order, the petitioner has an effective alternate remedy by way of appeal under Section 86 of the Finance Act 1994 before the CESTAT. However, the petitioner has by-passed the appellate remedy and filed writ petition on the only ground that the impugned order has been passed in violation of the principles of the natural justice without affording an opportunity of personal hearing to the petitioner. The problem has arisen on account of the fact that the notice for personal hearing had been sent to the address at No.109, Old No.53, III Floor, Linghi Chetty Street, Chennai 600 001. According to the petitioner, they had filed the appeal petition in Form No.EA-I, dated 23.05.2013 mentioning that the address for service is New No.78, Old No.79, 2nd Floor, Armenian Street, Chennai 1. It is true that the address at Linghi Chetty Street was initially the place where the petitioner was carrying on business. However, the said building was sealed, which necessitated the petitioner to shift to the present address. In fact, the company has been acquired by the present Management during the course of these proceedings.

4. Be that as it may. When the appeal was presented before the appellate authority, the address for service was given at Armenian Street. Therefore, the authority was bound to issue notice for personal hearing to the said address. In the written instructions given by the Assistant Commissioner of GST and Central Excise, Egmore Division to the Assistant Commissioner, Legal Section, Chennai North Commissionerate vide communication dated 21.08.2017, it has been accepted that the notice was sent to the address at Linghi Chetty Street. Thus, when the petitioner has filed the appeal giving a particular address, they are entitled for notice being served on the said address and since, the intimation did not reach them, they did not appear for the personal hearing and therefore, the respondents have proceeded exparte.

5. Thus, considering the peculiar facts and circumstances of the case, this Court is of the view that the petitioner should be afforded an opportunity of personal hearing by issuance of notice to the present address at Armenian Street and the appellate authority shall hear the petitioner in person and pass fresh orders on the appeal petition.

6. For the above reasons, this writ petition is allowed and the impugned order is set aside and the matter is remanded to

the second respondent for fresh consideration. The second respondent shall issue notice for personal hearing to the petitioner's address at New No.78, Old No.79, 2nd Floor, Armenian Street, Chennai -1 and hear the petitioner in person and pass order on merits and accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai\nv

To

1.The Deputy Commissioner of Service Tax,
Service Tax I Division,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Commissioner of Service Tax (Appeals - I)
Office of the Commissioner of Service Tax (Appeals - II)
Newry Towers, 2054/1, II Avenue,
12th Main Road, Anna Nagar, Chennai 600 040.

+1cc to Mr.S.Muthuvenkataraman, Advocate sr.64246

+1cc to Mr.S.R.Sundar, Advocate sr.63989

WP.No.17962 of 2017

nm(co)
ss(27/9/2017)