

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Thursday, the Seventh day of December Two Thousand Seventeen

PRESENT

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WMP No.29998 of 2017

in WP.No.27115 of 2017

THE COMMISSIONER
KOMARAPALAYAM MUNICIPALITY,
KOMARAPALAYAM - 638 183
NAMAKKAL DISTRICT

[PETITIONER]

Vs

1 THE COMMISSIONER
APPEALS-1, OFFICE OF COMMISSIONER
OF CENTRAL EXCISE, NO.1, FOULKS COMPOUND,
ANAI MEDU, SALEM-636 001

[RESPONDENTS]

2 THE JOINT COMMISSIONER OF
CENTRAL EXCISE, OFFICE OF COMMISSIONER
OF CENTRAL EXCISE, NO.1, FOULKS COMPOUND,
ANAI MEDU, SALEM-636 001

3 THE ASSISTANT COMMISSIONER
OF CENTRAL EXCISE, ERODE-II DIVISION,
NO.81, BHARATHI NAGAR, SOOLAI,
ERODE- 638 004

4 THE SUPERINTENDENT OF
CENTRAL EXCISE, KOMARAPALAYAM RANGE
AT ERODE, ERODE

5 THE BRANCH MANAGER
STATE BANK OF INDIA, KOMARAPALAYAM BRANCH,
KOMARAPALAYAM, NAMAKKAL DISTRICT

6 THE BRANCH MANAGER
CANARA BANK, KOMARAPALAYAM BRANCH,
KOMARAPALAYAM, NAMAKKAL DISTRICT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Modify the Interim Order granted by this Honble Court in WMP.No.27115 of 2017 in the WP No.25701 of 2017 dated 27.09.2017 with reference to condition for payment of Rs.5,00,000/- on the total penalty claimed (in WMP.No.29998/2017 in WP.No.25701/2017).

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.G.SANKARAN, Advocate for the petitioner the court made the following order:-

This miscellaneous petition has been filed to modify the interim order granted by this Court dated 27.09.2017, which is to the following effect:

"Notice of motion returnable by 01.11.2017. Private Notice is also permitted.

2.The petitioner is directed to pay service tax and cess as on date to the respondents, on or before 31.10.2017.

3.As regards penalty, there shall be an order of interim stay subject to the condition that the petitioner pays a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on the total amount claimed, failing which, the interim stay granted shall stand automatically vacated without further reference to this Court."

2.The reason for filing this application for modification is by stating that the Municipality has remitted excess service tax to the tune of Rs.6,00,266/-. The respondents were directed to file counter affidavit and accordingly counter affidavit has been filed by the Assistant Commissioner of GST & Central Excise, Salem, from which it is seen that the amount of service tax is yet to be paid by the Commissioner is Rs.11,34,535/- and the penalty is Rs.24,26,013/- totally Rs.35,60,549/-. If the petitioner wants to contest these figures, then their remedy lies elsewhere and not before this Court. The objections raised by the respondents is that as against the order passed by the Commissioner (Appeals), the petitioner has an effective alternate remedy and the writ petition itself is not maintainable.

3.Thus, for the above reasons, this Court is not inclined to modify the order dated 27.09.2017. Accordingly, this miscellaneous petitions stands dismissed. The petitioner-Municipality is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on or before 22.12.2017, failing which, the order of interim stay would stand automatically vacated. Leaving it open to the respondents to initiate appropriate action for recovery.

-sd/-

07/12/2017

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

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APPEALS-1, OFFICE OF COMMISSIONER OF CENTRAL
EXCISE, NO.1, FOULKS COMPOUND, ANAI MEDU,
SALEM-636 001

2 THE JOINT COMMISSIONER OF
CENTRAL EXCISE, OFFICE OF COMMISSIONER OF
CENTRAL EXCISE, NO.1, FOULKS COMPOUND, ANAI
MEDU, SALEM-636 001

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BHARATHI NAGAR, SOOLAI, ERODE- 638 004

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KOMARAPALAYAM, NAMAKKAL DISTRICT

C.C. to M/S.G.SANKARAN Advocate on payment of necessary charges

C.C. to M/S.K.CHANDRASEKARAN Advocate, Sr.No.15668.

Order

in
WMP.29998/2017

in
WP.27115/2017

Date :07/12/2017

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KP(08.12.2017) (IT)