IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.28942 of 2017 & WMP.No.31168 of 2017

M/s. Ultra Manpower Services,
Rep. by its Proprietor Shri P Kathiravan,
No.47/1, Pudhu Nagar, Abishekapakkam,
Puducherry-605 007. ... Petitioner

Vs.

1. The Assistant Commissioner of Central Excise,
   # 1 Vallalar Nagar, Manjakuppam,
   Cuddalore-607 001.

2. The Commissioner of Central Tax (Appeals-I)
   26/1, Mahatma Gandhi Marg,
   Nungamabakkam, Chennai-600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a of Writ of Certiorari calling for records in file C.No.IV/06/06/2013 comprising of impugned order in Original 15/2016 dated 28.12.2017 passed by the First Respondent and quash the same.

For Petitioner : M/s.Cynduja Crishnan
For Respondents : Mr.V. Sundareswaran
Senior Panel Counsel

O R D E R

Heard M/s.Cynduja Crishnan, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel appearing for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner has challenged the Order-in-Original dated 28.12.2016, in and by which the first respondent has demanded service tax of Rs.3,05,826/- under proviso to Section 73 of the Finance Act, 1994 (hereinafter referred as “the Act”), demanded appropriate interest on the said amount under Section 75 of the Act, imposed penalty as equvalent to that of the tax demanded under Section 78 of the Act, and imposed penalty of Rs.10,000/- under Section 77 of the Act. Aggrieved by such order, the petitioner preferred an appeal before the appellate

authority. The appellate authority found that the appeal petition to be time barred. The appellate authority observed that there is proof to show that the petitioner has received an Order-in-Original on 31.01.2017, and the stand taken by them that they have received the Order-in-Original only on 04.03.2017, was held to be a wrong submission.

3. Admittedly, as against the impugned order, the petitioner has an effective alternate remedy of filing an appeal before the CESTAT. Whether the appeal was presented within time and whether the date of receipt of the Order-in-Original as stated by the assesse is correct or not is a factual issue. Therefore, the petitioner has to necessarily avail the appeal remedy.

4.In the light of the above finding, the writ petition is held to be not maintainable. Accordingly, the same is dismissed. The petitioner is at liberty to move the CESTAT, if so advised. In the event, the petitioner moves the CESTAT, the date on which this writ petition is filed i.e., 13.10.2017, till the date of receipt of the certified copy of the order shall stand excluded while computing limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

bsm/abr

To

1. The Assistant Commissioner of Central Excise,
1 Vallalar Nagar,
Manjakuppam, Cuddalore District-607 001.

2. The Commissioner of Central Tax (Appeals-I)
26/1, Mahatma Gandhi Marg,
Nungamabkkam, Chennai-600034.

+1cc to Mr.Muthuventataraman, Advocate SR.No.80077
+1cc to Mr.V.Sundareswaren, Advocate SR.No.80299

WP No.28942 of 2017

GN(29/11/2017)