IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29657 of 2017

M/s.Sri Srinivasa Engineering
Plot No G5, 3rd Cross Street,
SIPCOT Industrial Estate,
Vallam Vadagal, Sriperumpudur Taluk,
Kancheepuram District,
Represented by its Proprietor
Ms.V.Jayasudhs ... Petitioner

Vs.

The Deputy Commissioner of
GST and Central Excise,
Sriperumpudur Division,
Chennai Outer Commissionerate,
C-48, TNHB Building,
Anna Nagar, Chennai - 600 040. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ Certiorarified Mandamus calling for the records in File C.No.IV/10/136/2017 - RF-MISC dated 28.09.2017 on the file of the respondent, quash the same and consequently direct the respondent to accept the refund claim and process the same reckoning the date of filing as 27.09.2017.

For Petitioner : Ms.Cynduja Crishnan

For Respondent : Mrs.R.Hemalatha
Senior Panel Counsel



O R D E R

Heard Ms.Cynduja Crishnan, learned counsel for the petitioner and Mrs.R.Hemalatha, learned Senior Standing Counsel for the respondent. With the consent on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is aggrieved by the impugned proceedings dated 28.09.2017 returning the petitioner's application for refund of service tax paid by the petitioner to SIPCOT on developmental charges in respect of an industrial plot allotted to them in SIPCOT Industrial Park, Vallam Vadagai, Sriperumpudur Taluk, Kancheepuram District.

3.The respondent has referred to Section 11B(5)(B)(f) of the Central Excise Act to state that the relevant date would mean the date of payment of duty and therefore, the application for refund having not been filed within one year from the relevant date, is rejected.

4.The petitioner's case on the other hand rests upon Section 104 of the Finance Act, 1994 inserted by Finance Act, 2017 dated 31.03.2017. The learned counsel for the petitioner would submit that the refund application made by the petitioner is in accordance with Section 104 and in terms of sub-section (3)of Section 104, a separate period of limitation has been prescribed and the said provision starts with a non obstante clause and therefore, the respondent cannot refer to Section 11B of the Central Excise Act, by virtue of Section 83 of the Finance Act, 1994 as this is a special provision providing for a relief to the persons who have allotted industrial plots either on long term lease or otherwise. In the application filed for refund dated 27.09.2017, the petitioner, though has referred to the retrospective amendment of the Finance Act, 2017, has not made the application as explicitly and as clearly as projected before this Court in this writ petition.

5.Thus, considering the fact that the respondent has not dealt with the newly inserted provision viz., Section 104 of the Finance Act, this Court is inclined to direct the respondent to reconsider the application of the petitioner for refund.

6.Accordingly, the Writ Petition is allowed and the impugned communication is set aside with a direction to the petitioner to represent the application for refund along with additional submissions both legal and factual and on receipt of the same, the respondent shall reconsider the application after affording an opportunity of personal hearing to the petitioner, take note of the legal interpretation given and pass a speaking order on merits and in accordance with law. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sgl

To

The Deputy Commissioner of
GST and Central Excise,
Sriperumpudur Division,
Chennai Outer Commissionerate,
C-48, TNHB Building,
Anna Nagar, Chennai - 600 040.

+1cc to Mr.R.Hemalatha, Advocate SR.No.82289
+1cc to Mr.S.Muthuvenkataraman, Advocate SR.No.82141

W.P.No.29657 of 2017

GN(11/12/2017)