IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16 .08.2017

Date of Reserving the Order	*Date of Pronouncing the Order*
02.08.2017	**16 .08.2017**

CORAM:

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

W.P.No.19626 of 2017
and
W.M.P.No.21192 of 2017

Tvl.KSM Earth Movers,
Rep., by its Partner P.Kandavel,
No.423/86-A3,
Theppakulam Street,
Sankari Road, Thiruchengodu,
Namakkal District. ..Petitioner

Vs.

The Deputy Commissioner of Central Excise,
Erode-II Division,
O/o. The Deputy Commissioner of Central Excise &
Service Tax,
Erode-II Division, No.81, Bharathi Nagar,
Soolai Road, Erode -638 004. ..Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in C.No.V/STG/15/30/2016-ST.Adjn. OIO.Sl.No.03/2017, (DC-S.Tax), dated 31.01.2017, quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.V.Sundareswaran,
Senior Panel Counsel

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ORDER

The petitioner is a registered dealer on the file of the respondent under the Finance Act, and has filed this Writ Petition challenging an order passed by the respondent, dated 31.01.2017, in Order-in-Original No.3 of 2017. By the said order, the respondent disallowed a sum of Rs.1,25,657/-, being ineligible CENVAT credit availed by the petitioner and ordered the same to be recovered under Rule 14 of the CENVAT Credit Rules, 2004, read with Section 73 of the Finance Act, 1994; demanded appropriate interest on the said amount and imposed penalty of an equivalent sum under Rule 15(3) of the said Rules read with Section 78(1) of the Act. At the very commencement of the hearing of the Writ Petition, the Court posed a question to the learned counsel for the petitioner as to how the Writ Petition is maintainable, as the petitioner has an effective alternate remedy of preferring an appeal to the Commissioner (Appeals-I), Coimbatore.

2. The learned counsel appearing for the petitioner, after elaborately referring to the factual matrix, submitted that there is no specific provision under the Rules, which prescribes that credit can be claimed only for the purchases effected from the registered dealers and in the absence of enabling

provision, the rejection of the credit is unsustainable. That the respondent failed to consider the various contentions raised by the petitioner in the reply, dated 03.11.2016, to the show cause notice, dated 12.07.2016. The respondent has failed to consider that the petitioner has satisfied the requirements of Rule 9 to claim CENVAT credit by producing the invoices raised from M/s.SSS Equipments and agent of the manufacture and that this document is sufficient to claim CENVAT Credit. Further, as per Rule 9(1)(b), even a supplementary invoice raised from the place where, the goods are despatched is sufficient to claim CENVAT Credit. In the instant case, the agent has raised the invoice and issued a certificate to the effect that the manufacturer, Hyundai Construction Equipment India Pvt., Ltd., had paid the excise duty under Rule 8 of the Central Excise Rules, 2002. Further, the decisions, which were relied on by the petitioner have not been considered and those decisions were placed before this Court to demonstrate that the impugned order is wholly untenable.

3. I have heard Mr.V.Sundareswaran, learned Senior Panel counsel for the respondent on the above submissions.

4. The first hurdle, the petitioner has to cross is to satisfy this Court the Writ Petition is maintainable, despite existence of an alternate remedy. In a long line of decisions, the Hon'ble Supreme Court has deprecated the practice

of Writ Courts interfering in matters, where there are efficacious alternate remedy provided under the relevant statute, especially in Revenue matters.

5. It is true that the Hon'ble Supreme Court has carved out exceptions and permitted parties to bypass the remedy provided under the statute and maintain a challenge by filing a Writ Petition under Article 226 of the Constitution of India. Thus the petitioner should be able to bring his case under any one of the exceptions, which have been carved out to maintain this Writ Petition despite of existence of an appellate remedy.

6. Admittedly, the petitioner does not question the jurisdiction of the respondent to issue the show cause notice and pass the impugned order. Infact, the petitioner submitted to the jurisdiction and filed their reply to the show cause notice and participated in the adjudication. Secondly, the plea that there has been violation of principles of natural justice as the respondent had afforded an opportunity of personal hearing to the petitioner after receiving the reply to the show cause notice. Whether such opportunity is to the satisfaction of the petitioner or not and whether it can be construed as denial of reasonable opportunity is again a pure question of fact. Thirdly, there is no allegation of *mala fides* against the third respondent to justify the challenge to the impugned order invoking the extraordinary remedy of this

Court.

7. Thus, when there is no challenge to the impugned proceedings on the grounds of lack of jurisdiction and the respondent having afforded an opportunity of personal hearing to the petitioner and whether it is to the satisfaction of the petitioner or not being a factual issue and in the absence of plea of *malafide*, the petitioner has to necessarily avail the alternative remedy provided. Further more, the nature of transaction and the documents which were relied on for the purpose of availment of CENVAT Credit are factual matters. This again has to be agitated before an authority, which is the fact finding authority, which can re-appreciate all the documents and records and can take a decision in the matter. Thus, there are no justifiable grounds to entertain the Writ Petition as against the impugned order.

8. For the above reasons, the Writ Petition is dismissed as not maintainable. It is left open to the petitioner to prefer an appeal to the Appellate Authority, if so advised. No costs. Consequently, connected Miscellaneous Petition is also closed.

16.08.2017

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Index:yes/no

Note: Registry is directed to return the original impugned order, after substituting the same with the certified copy.

T.S.SIVAGNANAM, J

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To

The Deputy Commissioner of Central Excise,
Erode-II Division,
O/o. The Deputy Commissioner of Central Excise &
Service Tax,
Erode-II Division, No.81, Bharathi Nagar,
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