

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.31638 and 31639 of 2003
and
WPMP.No.38432 of 2003

M/s.GVG Paper Mills Ltd., ..Petitioner in both W.P.'s
168/2,Sikkandar Batcha street,
Gandhi Nagar, UdumelPet,
Tamil Nadu 642 154.

Vs

1. Customs, Excise and Service Tax
(Appellate) Tribunal,
No.26,Haddows Road,
Sasthri Bhaven Annex,
Chennai-600 006.
2. The Commissioner of
Central Excise (Appeals)
No.6/7, ADT Race Course Road,
Coimbatore 640 018.
3. The Assistant Commissioner of
Central Excise,
Service Tax Cell,
Pollachi Division,
Pollachi.

..Respondents in both W.P.'s

Prayer in W.P.No.31638 of 2013: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of impugned Final Order No.826/03; Miscellaneous Order No.371/03 dated 08.10.2002 dismissing Appeal No.S/03/03/MAS and Miscellaneous Application No.S/MS/343/03 passed by the first respondent and quash the same.

Prayer in W.P.No.31639 of 2013:Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of impugned Stay Order No.232/03 dated 19.08.2003 passed by the first respondent

and quash the same and direct the respondent to pass a fresh order after following principles of natural justice and without insisting on pre-deposit of duty.

For Petitioner : Mr.C.Saravanan
(in both W.P.'s)
For Respondents : Mr.J.Madana Gopal Rao
(in both W.P.'s) Senior Central Government Standing
Counsel

C O M M O N O R D E R

The petitioner has filed the Writ Petition in W.P.No.31638 of 2003, challenging the Final order No.826/2003 dated 08.10.2003 and Misc. Order No.371/2003 dismissing the petitioner's Appeal No.S/3/03/MAS and Miscellaneous Application S/MS/343/03 in Appeal No.S/3/03/MAS and to quash the same.

2. Writ Petition in W.P.No.31639 of 2017 has been filed challenging the impugned order No.232/2003 dated 19.08.2003, passed by the first respondent herein and for a direction to the first respondent to pass final orders after considering the merits of the case, without insisting on pre-deposit of duty.

3. The Customs, Excise and Service Tax Appellate Tribunal, by an order dated 19.08.2003, has granted an order of interim stay directing the petitioner to make a pre-deposit of entire tax amount. Thereafter, the petitioner had filed an appeal, seeking modification of the said order and the same was dismissed on the ground of non-compliance of the stay order dated 19.08.2003. Both the orders are under challenge in these Writ Petitions.

4. The learned counsel for the petitioner would submit that the legal issue raised before the CESTAT is covered by the recent decision with some conditions and the same may be imposed in these Writ Petitions also so that the appeal may be disposed of on merits.

5. I have heard the learned Senior Central Government Standing counsel, on the above submissions.

6. Considering the fact that the Writ Petition is pending from the year 2003 onwards and there is an order of interim injunction in these Writ Petitions, this Court is of the view that the matter can be decided by the CESTAT on merits, subject to the petitioner being put on terms.

7. In the result, these Writ Petitions are allowed subject

to the condition that the petitioner pays 7.5% of the service tax as computed by the original authority i.e. The Assistant Commissioner of Central excise, by an order 14.06.1999, within a period of three weeks from the date of receipt of a copy of this order. After such remittance is made and proof is placed before the tribunal, the Tribunal shall entertain the appeal filed by the petitioner and dispose of the same, on merits and in accordance with law. If the petitioner does not comply with the said order, within the time limit, the benefit of the order would not enure to the petitioner and the Writ Petitions shall stand automatically dismissed, without further reference to this Court. Thereafter, it is open to the parties to proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Customs, Excise and Service Tax
Appellate) Tribunal,
No.26, Haddows Road,
Sasthri Bhaven Annex,
Chennai-600 006.
2. The Commissioner of Central Excise (Appeals)
No.6/7, ADT Race Course Road,
Coimbatore 640 018.
3. The Assistant Commissioner of Central Excise,
Service Tax Cell,
Pollachi Division,
Pollachi.

+1cc to Mr.C.Saravanan, Advocate SR.No.47967
+1cc to Mr.A.P.Srinivas, Advocate SR.No.48384

W.P.Nos.31638 and 31639 of 2003
and
WPMP.No.38432 of 2003

KGK(CO)
GN(31/07/2017)