THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Writ Petition No.16112 of 2017

DATED:13-11-2017

Between:

M/s. First Pass Semiconductors Private Limited
Rep. by its Whole Time Director
Mr. Giri Kondaveeti
11, Galaton Centre, Shilpi Valley
Madhapur, Hyderabad … Petitioner

And

The Commissioner of Central Excise
Customs & Service Tax
Hyderabad-IV
Commissionerate, Posnett Bhavan
Tilak Road, Ramkot, Hyderabad
and others … Respondents

COUNSEL FOR THE PETITIONER: Mr. Y. Koteswara Rao

COUNSEL FOR RESPONDENT NOs.1 to 5: Mr. B. Narayana Reddy,
Assistant Solicitor General

COUNSEL FOR RESPONDENT NO.6: -

THE COURT MADE THE FOLLOWING:

<u>ORDER:</u> *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This writ petition is filed for a mandamus to set aside Order in Original No.7/2016-17, Adjn (JC)-S-Tax, dt.5.8.2016, of respondent No.2 - Additional/Joint Commissioner of Central Excise, Customs and Service Tax, Hyderabad-IV.

2. The petitioner claimed to be the manpower recruitment and supply agency to respondent No.6. That during the period between 2011 and 2014, it has supplied the manpower to respondent No.6. It is the pleaded case of the petitioner that as respondent No.6 is located in Special Economic Zone in Visakhapatnam, the Government of India, Ministry of Commerce and Industry, vide Notifications dt.1.3.2011, 20.6.2012 and 01.07.2013, has exempted it from payment of service tax in respect of various services, including the manpower recruitment and supply agency, but, however, when a notice was issued by respondent No.2 for payment of service tax for the aforementioned period, the petitioner claimed to have informed that in view of the aforementioned Notifications of the Government of India exempting respondent No.6 from payment of service tax, it is not liable to pay the same. However, by order dt.05.8.2016 impugned in this writ petition, respondent No.2 has confirmed the demand of Rs.13,92,392/-

towards service tax under the category of 73(2) of the Finance Act, 1994 (for short, "the Act") for the period from April, 2011 to April, 2012 and from January 2013 to March, 2014. In addition to the service tax, interest in terms of Section 75 of the Act and penalty of Rs.13,92,392/- were levied. However, as regards the penalty, the same has been reduced to 25% of the service tax in terms of clause (ii) of second proviso to Section 78(1) of the Act, subject to payment of service tax and interest along with the reduced penalty within 30 days of receipt of the order. Assailing the order of the original authority, respondent No.2, the petitioner filed this writ petition.

3. At the hearing, Mr. Y. Koteswara Rao, learned counsel for the petitioner, submitted that though respondent No.6 is exempted from payment of service tax in respect various services, including manpower recruitment and supply, respondent No.2 has committed a serious error in levying tax, interest and penalty thereon, on the petitioner.

4. In the counter affidavit filed by the Commissioner, Customs, Central Excise and Service Tax, Hyderabad-IV, he has *inter alia* stated that when a demand notice was issued to the petitioner, it has requested for three weeks' time for producing Forms A-1 and A-2 from respondent No.6, which are required

for exemption from payment of service tax and that even after forty-five days thereafter the petitioner has failed to furnish those Forms and that the adjudicating authority having waited for substantially long period, had no option except passing the impugned order levying the service tax, and interest and penalty thereon as per the provisions of the Act.

5. The learned counsel for the petitioner has not disputed the aforementioned contents of the counter affidavit. Even if the petitioner is entitled to the benefit of exemption granted to respondent No.6, its failure to produce Forms A-1 and A-2, which are pre-requisites for exemption, resulted in passing of the impugned order. Therefore, respondent No.2 cannot be found fault with for levying the service tax, and interest and penalty thereon.

6. At the hearing, learned counsel appearing for the petitioner submitted that during the pendency of this writ petition, his client has paid the entire service tax dues and that interest and penalty components alone are to be paid. Though in strict sense the petitioner may not be entitled to any relief, more so, when its appeal was rejected as being time barred, however, considering the fact that it is claiming exemption under the Notifications issued by the Government of India in

favour of respondent No.6 and that what remains to be paid is only interest and penalty, to meet the ends of justice, we deem it appropriate to give an opportunity to the petitioner to produce Forms-A1 and A2 before respondent No.2 within four weeks from today. On such production, respondent No.2 may consider waiver of interest and penalty alone.

7. Subject to the above observations and directions, the writ petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P. No.19808 of 2017 and W.V.M.P. No.2679 of 2017 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

13-11-2017

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