THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 1817 of 2017

ORDER: ***(Per VRS,J)***

Aggrieved by the rejection of the refund of claim made by the petitioner under Section 11B of the Central Excise Act, 1944 read with Rule 5 of the Cenvat Credit Rules, 2004, the assessee is before us.

2. Heard Mr. V. Hari Haran, learned counsel for the petitioner, and Mr. M.V.J.K. Kumar, learned senior standing counsel for Customs, Central Excise and Service Tax, appearing for the 1st respondent.

3. One of the several grounds, on which the claim for refund of Cenvat Credit was rejected by the original authority, is the non-production of documents. Though there is a dispute as to whether the petitioner produced or whether they were called upon to produce or not, the fact remains that two volumes of records are available with the petitioner to be produced. In such circumstances, there are only two alternatives available to this Court, namely, either to set aside the impugned order and remit the matter back to the original authority for consideration of all the relevant documents, or in the alternative, to allow the petitioner to go before the appellate authority as against the impugned order with a direction to the appellate authority to take note

of the additional material. The second course of action will avoid one more round of litigation for both parties. The appellate authority being an authority competent to decide a question of fact, is also competent to look into the documents relied upon by the petitioner.

4. More over, as against the impugned order, dated 26.12.2016, received by the petitioner on 02.01.2017, the petitioner has a remedy of appeal, the limitation for which would expire after 90 days of receipt of a copy of the order. In other words, the petitioner still has time to file a statutory appeal.

5. Therefore, the Writ Petition is disposed of, permitting the petitioner to raise all the objections and also file all the documents before the appellate authority, on or before 31.03.2017. Upon the petitioner filing an appeal, the appellate authority shall consider all the documents, give an opportunity of hearing to the petitioner, and pass an order, in accordance with law, within a period of eight (8) weeks from the date of filing of the appeal. The Registry is directed to return the original impugned order, to enable the petitioner to file an appeal.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

20th March, 2017
Note: Issue C.C. by 21.03.2017.
(b/o)
cbs

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