In the High Court of Judicature at Madras

Dated : 11.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8012 of 2018 & WMP.No.9991 of 2018

Anandram Developers Pvt.
Ltd., rep.by its Director
Mukundan Vijayan ...Petitioner

Vs

1.The Superintendent, office of the Superintendent of GST & Central Excise, Vadapalani II Range, South Commissionerate of GST & Central Excise, Ground Floor, Newry Towers, Plot No.2054, I Block, 12th Main Road, II Avenue, Anna Nagar, Chennai-40.

2.The Commissioner (Appeals), Newry Towers, Plot No.2054, I Block, 12th Main Road, II Avenue, Anna Nagar, Chennai-40. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of Letter O.C.No.122/2017-18 dated 21.3.2018 issued by the 1st respondent, quash the same as arbitrary and illegal and direct the 2nd respondent to hear the appeal filed by the petitioner on 29.4.2016 against order in Original Nos.45-48/2015-16-ST-2 dated 25.1.2016 and dispose of the appeal in accordance with law.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.K.Ravi, Sr. St. Counsel

ORDER

Mr.K.Ravi, learned Senior Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks to quash the communication dated 21.3.2018 issued by the first respondent, by which, the petitioner was informed that there is no appeal filed against the Order-in-Original dated 25.1.2016 before the Commissioner of Appeals and that the same appears to have been filed before some other Authority.

3. The case of the petitioner is that the appeal was filed in Form ST-4 on 29.4.2016 before the Commissioner of Central Excise (Appeals) and presented in his office at Newry Towers, Anna Nagar, Chennai-40. In the affidavit filed in support of the writ petition, the petitioner has given the name of the employee, who presented the appeal petition along with paper book in Ref.I.C.No.63987 dated 02.5.2016 wherein ADC-II has made a noting. The impugned communication states that on verification of the paper book, it was observed that the appeal against the Order-in-Original dated 25.1.2016 was submitted to the Commissioner of Service Tax instead of the Commissioner (Appeals). Therefore, it was construed that no appeal was filed.

4. From the e-mail sent by the petitioner to the Department enclosing a scanned copy of the acknowledgment dated 29.4.2016, there appears to be sufficient material to show that the appeal petition was presented before the concerned Authority. Even assuming that the appeal was presented before a wrong officer, the same could have been returned to the petitioner either for being presented before the appropriate officer or the Registrar of the Department could have forwarded the same to the appropriate officer. However, there appears to be certain procedural lapses in the Department and for such a reason, this Court is not inclined to foreclose the petitioner's appeal remedy, when there is a prima facie proof to show that the appeal papers were presented on 29.4.2016. Apart from that, the petitioner has also produced the proof to show that the pre-deposit condition has been complied with. In the light of the above, this Court is inclined to issue appropriate directions, so that the appeal can be decided on merits.

5. Accordingly, the writ petition is disposed of with a direction to the petitioner to file required number of sets of appeal papers before the second respondent within a period of two weeks from the date of receipt of a copy of this order and also enclose the proof of compliance of pre-deposit condition. If the appeal papers are presented within the time stipulated by

this Court, the second respondent shall verify as to whether the mandatory pre-deposit condition has been complied with and upon satisfactory proof of compliance, the appeal shall be taken on file without rejecting the same on the ground of limitation. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Superintendent, office of the Superintendent of GST & Central Excise,
Vadapalani II Range, South Commissionerate of GST & Central Excise,
Ground Floor, Newry Towers, Plot No.2054, I Block, 12th Main Road, II
Avenue, Anna Nagar, Chennai-40.
2.The Commissioner (Appeals), Newry Towers, Plot No.2054, I Block, 12th
Main Road, II Avenue, Anna Nagar, Chennai-40.

RS

SSI(CO)
sm:26.4.2018

WP.No.8012 of 2018&
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