IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.4840 of 2018
and
W.M.P.No.5980 of 2018

M/s. Kali Aerated Water Works (P) Ltd.,
1/325-10/168, Opp. To Govt. High School,
Udayapatti,
Salem - 636 140 .. Petitioner

Vs.

1. The Superintendent of GST & Central Excise,
Salem - IV Range,
1/276, Shiva Towers,
Meyyanoor Main Road,
Salem - 636 004.

2. The Commissioner of GST & Central Excise,
No.1, Foulks Road,
Anaimedu,
Salem - 636 001. .. Respondents

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the recovery proceedings initiated against the petitioner by the 1st respondent through the communication bearing O.C.No.6/2018 dated 08.01.2018 and quash the same.

For Petitioner: Ms.S.Yogalakshmi
for Mr.S.Jaikumar

For Respondents: Mrs.Hema Muralikrishnan
Standing Counsel

O R D E R

Mrs.Hema Muralikrishnan, learned Standing counsel takes notice for the respondents. By consent of the parties, the main writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved against the notice issued under Section 11 of the Central Excise Act, 1944, calling upon the petitioner to pay the duty, interest and penalty referred to in the impugned notice, totally Rs.62,22,281/-.

3. The grievance of the petitioner before this Court is that when an appeal is filed against an order in original passed by the Adjudicating Authority dated 01.06.2017, the impugned demand cannot be made without even waiting for the order to be made in the said appeal. Learned counsel for the petitioner further submitted that at the time of filing the appeal before the Appellate Authority, the petitioner has made some payment by way of pre-deposit. Therefore, she contended that the impugned demand cannot be sustained during the pendency of the above appeal.

4. Learned counsel appearing for the respondents submitted that though an order in original was passed on 01.06.2017, the petitioner has chosen to file the appeal against the said order only on 08.01.2018 and therefore, the petitioner cannot seek any indulgence from this Court.

5. Upon hearing the learned counsels appearing on either side, it is seen that challenging the order in original, the petitioner has filed an appeal before the Appellate Authority, however, with a delay of 160 days as stated by the petitioner in the affidavit filed in support of the writ petition. It is further seen that the petitioner filed application before the Appellate Authority seeking for condonation of such delay. It is not in dispute that the said application is still pending before the Appellate Authority. It is also stated that the petitioner has tendered an amount of Rs.1,92,500/- by way of pre-deposit before the Appellate Authority.

6. Considering all these facts, this Court is of the view that the Appellate Authority has to take up the application filed for condonation of delay and dispose of the same on merits and in accordance with law, so that the question as to whether the appeal has to be heard and decided on merits or not can also be considered accordingly. Accordingly, the writ petition is disposed of by directing the Appellate Authority, namely, the Commissioner (Appeals) to take up the condone delay petition and dispose of the same on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. Till such time, the impugned demand shall be kept in abeyance. It is made clear that this Court is not expressing any view on the merits of the matter as it is for the appellate authority to consider and decide. Since the Appellate Authority is not made as party in this writ petition, Registry is directed to mark a copy of this order to the Commissioner of GST &

Central Excise (Appeals-I), Coimbatore, Circuit Office at Salem-636 001. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vsi

To

1. The Superintendent of GST & Central Excise,
   Salem - IV Range,
   1/276, Shiva Towers,
   Meyyanoor Main Road,
   Salem - 636 004.

2. The Commissioner of GST & Central Excise,
   No.1, Foulks Road,
   Anaimedu,
   Salem - 636 001.

3. The Commissioner of GST & Central Excise (Appeals-I),
   Coimbatore, Circuit Office at Salem-636 001.

+ 1 cc to Mr.S.Jaikumar Advocate,SR.16562

+ 1 cc to Mrs.Hema Muralikrishnan Advocate,SR.16888

W.P.No.4840 of 2018

nr 19/03/2018