IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.02.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11858 of 2017
and W.M.P.No.12788 of 2017

M/s.Tube Investment of India Ltd.,
Dare House,
No.234, NSC Bose Road,
Chennai 600 001. ... Petitioner

Vs.

1.Union of India
Rep.by its Secretary,
Ministry of Finance
Department of Revenue,
New Delhi.

2.The Central Board of Excise & Customs,
North Block, New Delhi.

3.The Commissioner of Service Tax,
LTU Audit Circle - Chennai,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai 600 101.

4.Commissioner of Central Excise,
Large Tax Payer Unit, Chennai,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai 600 101. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the show cause notice No.LTUAC/CHN/01/2017 - C dated 12.01.2017 issued by the third respondent and to quash the same.

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For Petitioner : Mr.Raghavanramabadran

For R1 : Mr.A.P.Srinivas
SCGSC

For R2 to R4 : M/s.R.Hemalatha
Senior Penal Counsel

O R D E R

Heard Mr.Raghavanramabadran, learned counsel appearing for the petitioner, Mr.A.P.Srinivas, learned Senior Central Government Standing Counsel for the first respondent and Mrs.R.Hemalatha, learned Senior Panel Counsel for respondents 2 to 4.

2. This Writ Petition has been filed by the petitioner/Assessee, challenging the show cause notice issued by the fourth respondent. The challenge to the impugned show cause notice is primarily on the ground that, though the notice is based upon the Audit objections, which were made by the third respondent, vide objections dated 10.08.2016, the reply given by the petitioner to the Audit objections dated 16.12.2016 have not even been referred to, much less considered.

3. The petitioner would state that, for the two valid reasons, the reply given by the petitioner to the Audit objections are required to be considered. Firstly, the Superintendent of Central Excise, while forwarding the Audit Slip for the year 2016-2017 regarding the non-refusal of the proportionate CENVAT credit of service tax paid on common services used by the Subsidiary and Joint Venture Companies directed the petitioner to file a reply to the Audit Slip.

4. The petitioner responded to the said communication and sent a reply dated 16.12.2016. Among other things, the petitioner, at the very outset, requested the fourth respondent to give them an opportunity of personal hearing. The second reason being that the Central Board of Excise and Customs (hereinafter referred to as " the CBEC ") by Master Circular dated 10.03.2017 in Circular No.1053/02/2017-CX has issued various directions with regard to the issuance of the show cause notice, adjudication process, recovery, etc., The master circular is divided into four parts and Part I deals with show cause notice related issues. Paragraph 5.0 of Part I of the master circular deals with consultation of noticee before issuing of show cause notice. For better appreciation, the same is quoted hereunder:-

> "5.0 Consultation with the notice before issue of Show Cause Notice: Board has made

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pre show cause notice consultation by the Principal Commissioner / Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs.50 lakhs (except for preventive / offence related SCN's) mandatory vide instruction issued from F No.1080/09/DLA/MISC/15 dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice."

5. The concern of the CBEC appears to have been that, when large tax payers are visited with show cause notices, there should be a consultation process and the monetary limit has been fixed where duty demands are above Rs.50 lakhs, except for preventive/offence related show cause notices. The Circular mandates that such consultation should be made by the Principal Commissioner / Commissioner prior to the issuance of show cause notice. Though the Circular dated 10.03.2017 came to be issued much after the impugned show cause notice, it reiterates the procedure stipulated in the Circular dated 21.12.2015, wherein, the following directives have been issued:-

" 5.Pre show cause notice consultation with the Principal Commissioner and Commissioner is being made mandatory prior to issue of show cause notice in the case of demands duty above Rs.50 lakhs (except for preventive / offence related SCN's)."

6. Even prior to that, there is another circular issued by the CBEC dated 08.07.2016, which also gives similar directives with regard to the pre show cause notice consultation. The operative portion of the circular reads as follows:-

"Please refer to the instruction issued vide F No 1080/09/DLA/MISC/15 dated 21st December 2015, wherein, pre show cause notice consultation with the Principal Commissioner / Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs.50 lakhs (except for preventive / offence related SCN's) has been made mandatory."

7. Admittedly, the above referred procedure, which has been held to be a mandatory by CBEC, has not been adhered to in the instant case. That apart, when the petitioner had been given an opportunity to submit the reply to the Audit Slip,

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which they had submitted by reply dated 16.12.2016, the same ought to have been considered by the fourth respondent prior to issuance of the show cause notice. If, for some reasons, the fourth respondent was of the opinion that the reply given by the petitioner to the Audit Slip is not satisfactory, then at least the same should have been dealt with in the impugned show cause notice, which has not been considered.

8. Thus, for the above reasons, this Court is inclined to entertain the present Writ Petition, challenging the show cause notice. In the result, the Writ Petition is allowed, the impugned notice is set aside and the matter is remanded to the fourth respondent, for fresh consideration. The fourth respondent is directed to afford an opportunity of personal hearing to the authorized representative(s) of the petitioner, consider the reply given by the petitioner dated 16.12.2016 to the Audit Slip and after affording full and effective opportunity, consider the case and then proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1.The Secretary,
Ministry of Finance
Department of Revenue,
New Delhi.

2.The Central Board of Excise & Customs,
North Block, New Delhi.

3.The Commissioner of Service Tax,
LTU Audit Circle - Chennai,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar West Extension,
Chennai 600 101.

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4.The Commissioner of Central Excise,
Large Tax Payer Unit, Chennai,
No.1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai 600 101.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.10260

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.10997

+1cc to Mr.Lakshmi Kumaran, Advocate, S.R.No.10382

W.P.No.11858 of 2017

RRK(26/02/2018)

HIGH COURT OF JUDICATURE MADRAS
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