IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.12488 of 2018 &
W.M.P.No.14630 of 2018

Hypertherm (India) Thermal Cutting Pvt Ltd.
Rep by its Director Mr.Kotagiri Pramod Kumar
New No.83, Old No. 52, Bazullah Road
T.Nagar Chennai-600 017. .. Petitioner

v.

Assistant Commissioner of GST & Central Excise
O/o. Assistant Commissioner of GST
& Central Excise
Thyagaraya Nagar Division
Chennai South Commissionerate
No.692, MHU Complex
Chennai-600 035. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Original No.04 to 06/2018-RF, dated 28.02.2018 passed by the respondent, quash the same as arbitrary and illegal and to direct the respondent to refund the amount.

For Petitioner : Mr. Joseph Prabakhar

For Respondent : Mr.V.Sundareswaran

Senior Standing Counsel

ORDER

Heard Mr.Joseph Prabakhar, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Standing Counsel for the respondent.

2. The petitioner has filed this writ petition challenging the order passed by the respondent dated 28.02.2018, by which, three of the refund claims made by the petitioner have been rejected.

3. The learned counsel appearing for the petitioner made rival submissions on the merits of the matter and submitted that the impugned order is an outcome of total non-application of mind. The learned counsel referred to the order passed by the Commissioner of Appeals dated 05.02.2018, by which, the matter was remanded for fresh consideration to the respondent and without taking note of the observations contained in the said order, the impugned order has been passed. It is further submitted that in respect of an earlier order passed by the Commissioner of Appeals remanding the matter for fresh consideration, the respondent has not taken any action and the matter is pending. While so, three of the refund claims filed by the petitioner alone were taken up for adjudication and the impugned order has been passed.

4. Admittedly, as against the impugned order, the petitioner has an effective alternative remedy of filing an appeal before the Commissioner of Appeals and time limit for 60 days is provided under the Act.

5. Earlier, when the petitioner had filed writ petition in W.P.No.32277 of 2017, challenging the order in original dated 28.06.2016, was initially entertained, however, after counter affidavit was filed, writ petition was dismissed by order dated 15.12.2016 on the ground of alternative remedy. The petitioner preferred appeal against the said order in Writ Appeal No.341 of 2017, which was dismissed by the Hon'ble Division Bench by judgment dated 26.07.2017. Thereafter, the petitioner preferred an appeal before the Commissioner of Appeals, which was allowed and the matter was remanded to the respondent for fresh consideration.

6. Thus, considering the facts and circumstances of the case, I find that there is no ground to entertain the writ petition as against the impugned order as the remedy provided under the Act, viz., the appeal remedy before the Commissioner of Appeals is not only an effective remedy but an efficacious remedy as well. Therefore, the petitioner has to necessarily avail the appeal remedy provided under the statute and should not be permitted to bypass the same.

7. Thus, for the above reasons, the writ petition held to be not maintainable. Hence, it is dismissed. However, the petitioner is granted liberty to file an appeal before the Commissioner (Appeals) within a period of four weeks from the date of receipt of a copy of this order and if the appeal is filed within the time permitted, the appellate authority, shall entertain the appeal without rejecting the same on the ground of limitation. It is open to the petitioner to canvass all contentions before the appellate authority. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2018

Index : Yes/No

Note : Registry is directed to return the original impugned order dated 28.02.2018 to the counsel for the petitioner

Rj

To

The Assistant Commissioner of GST & Central Excise
O/o. Assistant Commissioner of GST
& Central Excise
Thyagaraya Nagar Division
Chennai South Commissionerate
No.692, MHU Complex
Chennai-600 035.

T.S.SIVAGNANAM, J

Rj

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