In the High Court of Judicature at Madras

Dated : 09.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.285 of 2018 & WMP.No.340 of 2018

Sunmac Enterprises, rep. by its
Proprietor K.Hari, Coimbatore ...Petitioner

Vs

The Commissioner of Central Excise,
6/7, A.T.D.Street, Race Course Road,
Coimbatore-18. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent herein in order C.No.V/RIP/15/139/2015-ST.Adj./Order Sl.No. CBE/ST/28/2017-Commr dated 27.4.2017 and quash the order demanding tax and imposing penalties.

For Petitioner : Mr.J.Shankarraman

For Respondent : Mr.A.P.Srinivas, SPC

ORDER

Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for the respondent. Heard both.

2. The petitioner has challenged an order passed by the respondent dated 27.4.2017, by which, the activity done by the petitioner namely erection, maintenance and repairs of street lights for the use of Municipal Corporation was held to attract levy of service tax. Accordingly, the proposal made in the show cause notice has been confirmed.

3. The learned counsel for the petitioner submits that though the petitioner has an appeal remedy before the Customs, Excise and Service Tax Appellate Tribunal, for three reasons, the petitioner may not be directed to avail the appeal remedy. Firstly, the petitioner has placed reliance on the decision of the Mumbai Tribunal in the case of Enam Service Private Limited Vs. CST, Bombay [reported in 2015 (37) STR 794], which was not followed by the Commissioner on the ground that the Department

filed an appeal before the Hon'ble Supreme Court in Civil Appeal Nos.3641 and 3642 of 2015. Secondly, in the petitioner's own case, the Tribunal passed an order in ST/19/2007 dated 10.1.2017 and granted partial relief, though such an order was not placed before the Commissioner. Thirdly, because of the financial difficulty, the petitioner will not be able to pay the mandatory pre-deposit of 7.5% of the duty demanded.

4. In my considered view, all the above three grounds cannot be a reason for bypassing the appeal remedy available under the Statute. The inability to pay the mandatory pre-deposit cannot be a ground to entertain a writ petition. Secondly, with regard to the decision in Enam Service Private Limited, prima facie, the Hon'ble Supreme Court was satisfied that question of law was involved and therefore, special leave petitions were entertained and were converted into civil appeals. Thirdly, in the assessee's own case, the Tribunal recently rendered a decision, which, according to the petitioner, granted a partial relief. However, the order was not placed before the Commissioner. In any event, this can be done by the petitioner by filing an appeal as against the impugned order.

5. For all the above reasons, the writ petition is held to be not maintainable and is accordingly dismissed leaving it open to the petitioner to file an appeal before the Tribunal. No costs. Consequently, the connected WMP is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
The Commissioner of Central Excise, 6/7, A.T.D.Street, Race Course Road,
Coimbatore-18.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.2020

WP.No.285 of 2018&
WMP.No.340 of 2018

KGK(CO)
RRK(05/02/2018)