In the High Court of Judicature at Madras

Dated : 19.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.16002 of 2018 & WMP.No.19032 of 2018

UF Media Private Ltd., rep.
By its Authorized Signatory
F.Usman Faheed ...Petitioner

Vs

The Assistant Commissioner of GST
and Central Excise, Egmore Division,
Newry Tower, Plot No.2054, I Block,
12th Main Road, II Avenue,
Anna Nagar, Chennai-40. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order passed by the first respondent in Order-in-Original No.04/2018 dated 25.1.2018 in file C.No.IV/16/17/2018-Adj received on 31.1.2018 and quash the same.

For Petitioner : Mr.J.Shankar Raman
For Respondent : Mr.K.S.Ramasamy, SPC

ORDER

Heard both.

2. The writ petition has been filed challenging the Order-in-Original passed by the respondent dated 25.1.2018, in and by which, the respondent confirmed the demand of Swachh Bharat Cess and Krishi Kalyan Cess under Section 73(2) of the Finance Act, 1994, the demand of interest under Section 75 of the said Act and the levy of penalty and also held that the petitioner erroneously utilized the Cenvat credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 73(2) of the said Act.

3. This Court has entertained the writ petition only on the ground that the petitioner had specifically stated in paragraph 6 of the affidavit in support of the writ petition that they had produced the original documents at the time of personal hearing and submitted xerox copies of the same. In order to give an opportunity to the respondent to deny or controvert the said averment, the case has been adjourned twice.

4. However, it appears that only oral instructions have been given to the learned Senior Panel Counsel to submit that procedural requirements are mandatory and since the relevant Rules stipulate a procedure that the assessee should produce all original documents and if the assessee fails to obey the same, then the Assessing Officer is entitled to take a stand as taken in the impugned order. In support of the said contention, the learned Senior Panel Counsel relies on the decision of the Hon'ble Division Bench of the High Court of Himachal Pradesh in the case of Commissioner of Central Excise Vs. Spectra Electronics Pvt. Ltd. [reported in (2009) 235 ELT 795]. The learned Senior Panel Counsel further submits that the writ petition is not maintainable, as there is an effective alternate remedy available under the provisions of the Statute as against the impugned order.

5. The learned counsel for the petitioner reiterates the submissions made by the petitioner in the affidavit filed in support of the writ petition and also produced original documents before this Court. He further submits that the original documents were shown to the respondent at the time of personal hearing and xerox copies were also handed over and without standing on technicalities, if the assessee is granted one more opportunity to go before the Assessing Officer, they will produce the original documents under due acknowledgment, after which, the respondent may be directed to pass appropriate orders.

6. In the considered view of this Court, the submission made by the learned counsel for the petitioner is well founded, since no assessee is going to be benefited by not producing the original documents and suffer an order at the hands of the respondent. Thus, this Court is of the view that one more opportunity can be granted to the petitioner to go before the respondent to produce the original copies of invoice, payment details/proof of payment or any other valid documents for availment of Cenvat credit.

7. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for a fresh consideration. The respondent shall fix a date for personal hearing and on that date, the petitioner, through their authorized representative, shall produce the original documents as called for by the respondent and after affording an effective opportunity of personal hearing, the respondent is directed to pass fresh orders on merits and in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner of
GST and Central Excise,
Egmore Division,
Newry Tower, Plot No.2054,
I Block, 12th Main Road, II Avenue,
Anna Nagar, Chennai-40.

+1cc to Mr.K.S.RAMASAMY, Advocate, S.R.No. 47880

WP.No.16002 of 2018&
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KJ(CO)
TR(07/08/2018)