IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2656 of 2012 & M.P.No.1 of 2012

M/s.Faithful Engineers Private Ltd.,
rep. by its Director, Mr.G.Sankaran,
New No.34, Old No.17, Five Furlong Road,
Madhuvankarai, Chennai-600 032. ... Petitioner

Vs.

1.The Deputy Commissioner of
Central Excise, Guindy Division,
Chennai-600 032.

2.The Superintendent of Central Excise,
Velachery Range, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records comprised in O.C.No.6/2012 dated 06.01.2012 on the file of the second respondent, quash the same.

For Petitioner : M/s.Cynduja Krishnan
for Mr.Mohammed Shaffiq

For Respondents : M/s.Aparna Nandakumar
Senior Standing Counsel

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O R D E R

Heard M/s.Cynduja Krishnan, learned counsel for the petitioner and Mrs.Aparna Nandakumar, learned Senior Standing Counsel for the respondents.

2.The petitioner is aggrieved by the notice of demand issued by the second respondent dated 06.01.2012, directing the petitioner to pay a sum of Rs.83,18,927/- being the alleged defaulted amount of central excise duty along with applicable interest, said to have fallen due and liable to be paid for the transactions during the months of January 2011 to November 2011. The petitioner is aggrieved by the impugned demand on account of the fact that no show cause notice was issued to the petitioner as required under Section 11 of the Central Excise Act, 1944.

3.Learned counsel for the petitioner points out that in respect of the prior period, i.e., from November 2008 to June 2010, show cause notices dated 19.11.2009 and 23.07.2010 were issued and from July 2009 to March 2009, show cause notice has been issued and the matters are now pending before the adjudicating authority.

4.Thus, taking note of the conduct of the Department for the prior period and on perusal of the impugned demand, I find that the demand has been issued without issuing show cause notice, precisely for this reason, the Court while entertaining the writ petition in the year 2012, granted an order of interim stay.

5.Thus, for the above reason, this writ petition is allowed, the impugned notice is quashed and the matter is remanded to the second respondent for fresh consideration and the appropriate authority is permitted to issue show cause notice to the petitioner and adjudicate the matter on merits for a decision in accordance with law. This Court is not inclined to issue any further direction on account of the fact that the learned counsel for the petitioner raised a point that at this juncture, show cause notice cannot be issued by the Department and it is barred by time. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Union of India and others vs. Madhumilan Syntex Pvt. Ltd. reported in 1988 (35) E.L.T. 349 (SC). In any event, this issue can very well be raised by the petitioner in the event the Department re-visits the matter. If it is done, then, the period during which the writ petition was pending i.e., from 02.02.2012 till the receipt of the certified copy of this order by the Department has to be necessarily excluded.

6.After the order was dictated, the learned counsel for the petitioner would submit that in the light of the decision in J.K.Cotton SPG. & WVG. Mills Co. Ltd., vs. Collr. of Central Excise reported in 1998 (99) E.L.T. 8 (SC), the period during which this writ petition was pending should not be excluded, since there was no order of stay granted by this Court for issuance of show cause notice. However, it is seen from the records of the proceedings, the Court granted an order of interim stay. Therefore, it is for the petitioner to interpret the legal position before the authority, in the event the authority proceeds further. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deuty Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Deputy Commissioner of
Central Excise, Guindy Division,
Chennai-600 032.

2.The Superintendent of Central Excise,
Velachery Range, Chennai.

+1CC to Mr.Aparna Nandakumar - Advocate S.No.4321

W.P.No.2656 of 2012

GN(20/02/2018)