IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.25417 of 2018
and
W.M.P.Nos.29578 & 29579 of 2018

M/s. CRI Pumps Pvt.Ltd.
Its authorized signatory,
(Unit - Ransar Industries - II)
SF No.480/481, Sathy Road, Kurumbapalayam,
Coimbatore - 641 107. ...Petitioner

vs.

1.The Additional Commissioner of Customs,
Central Excise and Service Tax, No.6/7,
ATD Street, Race Course Road,
Coimbatore - 641 018.

2.The Commissioner of GST and Central Excise,
No.6/7, ATD Street, Race Course Road,
Coimbatore - 641 018.

3.The Commissioner of GST and Central Excise (Appeals - I),
No.6/7, ATD Street, Race Course Road,
Coimbatore - 641 018.

4.Union of India,
Represented by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the Impugned Order in the Order-in-Original No.07/2017-C.Ex.(ADC) dated 22.12.2017 passed by the 1st Respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.A.P.Srinivas,
Senior Standing Counsel (IT)

O R D E R

Mr.A.P.Srinivas, learned Senior Standing Counsel (IT) takes notice for the respondents and by consent of parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order in original dated 22.12.2017 passed by the first respondent.

3. Heard Mr.Raghavan Ramabadran, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel (IT) for the respondents.

4. The first respondent passed the impugned order, confirming the classification of capacitor box/control panel under chapter heading 8537 of the Schedule to the Central Excise Tariff Act, 1985, read with Section-174 of the Central Goods and Services Tax Act, 2017, confirming the demand of Rs.70,32,814/-, imposing penalty of Rs.70,32,814/- and confirming the demand of interest under Section- 11AA 10 of the Central Excise Act, 1944, read with Section-174 of the Central Goods and Services Tax Act, 2017.

5. There is no dispute to the fact that before passing the impugned order, the petitioner was served with show cause notice, who in turn filed its reply to the same. Perusal of the impugned order would show that the Adjudicating Authority has considered the merits of the matter in detail and arrived at such conclusion. The contentions raised by the petitioner on merits of the matter, as well as the correctness or otherwise of the order passed by the Adjudicating Authority, impugned in this writ petition, cannot be gone into at this stage by this Court, for giving any view on the same for the simple reason, that as against the said order, the petitioner is having a statutory appellate remedy before the Commissioner of Customs and Central Excise, Appeals-1, Coimbatore, as evident from the impugned order itself.

6. Needless to say that when such statutory appellate remedy is available as against the order in original, it is for the petitioner to approach such authority and canvass all the points before such authority, as has been raised in the writ petition. Without doing so, filing of the present writ petition cannot be considered as a proper course of action, as it is well settled that in fiscal matters the aggrieved party should always resort to the alternative appellate remedy before such competent authority, who also is a fact finding authority, unless the order sought to be challenged was passed without jurisdiction or in violation of principles of natural justice or the same, on the face of it, is erroneous, so as to invoke the writ jurisdiction of this Court.

7. The learned counsel for the petitioner, at this juncture, fairly submitted that the petitioner is willing to file an appeal before the concerned Appellate Authority, provided, such liberty is given to the petitioner. He also pointed out that the impugned order was not properly served on

the petitioner and therefore, there can be some delay in filing such appeal, which this Court can consider and direct the Appellate Authority to entertain the appeal and decide the same on merits.

8. Considering the fact that this Court is not inclined to entertain the present writ petition on the sole reason that the petitioner has to avail the alternative remedy of appeal as stated supra, this writ petition is disposed of, without expressing any view on the merits of the matter, with liberty to the petitioner to file such appeal, by complying with other statutory requirements, within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed before the concerned Appellate Authority within the time stipulated as stated supra, the same shall be considered and orders will be passed on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, the connected miscellaneous petitions are closed.

krk/mk

Sd/-
Assistant Registrar(CS-V)

// True Copy//

Sub Assistant Registrar

To

1.Additional Commissioner of Customs,
Central Excise and Service Tax, No.6/7,
ATD Street, Race Course Road,
Coimbatore - 641 018.

2.Commissioner of GST and Central Excise,
No.6/7, ATD Street, Race Course Road,
Coimbatore - 641 018.

3.Commissioner of GST and Central Excise (Appeals - I),
No.6/7, ATD Street, Race Course Road,
Coimbatore - 641 018.

4. The Secretary to Govt.,
Union of India,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.

+ 1 CC TO MR.A.P.SRINIVAS, ADVOCATE SR 67962
+ 1 CC TO MR.LAKSHMIKUMARAN, ADVOCATE SR 67940