

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28141 of 2018

and

WMP.No.32792 of 2018

Sri Abhirami Enterprises
Rep. by its Prop : V.Raghavendra Rao
No.435/185, 18, 19 T.H.Road,
Thiruvottiyur,
Chennai-600 019.

... Petitioner

Vs.

The Additional Commissioner
Office of the Principal Commissioner of GST &
Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Chennai-600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order in original No.13/2018-CH.N.(ADC) dated 12.02.2018 and quash the same.

For Petitioner	:	Mr.K.Jayachandran
For Respondent	:	Mr.S.R.Sundar
		standing counsel

O R D E R

Mr.S.R.Sundar, learned standing counsel takes notice for the respondent. By consent of the 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 12.02.2018 passed by the respondent, wherein and whereby, the respondent has confirmed the demand of Rs.93,95,679/- being Service Tax, Education Cess and SHE Cess and interest as applicable on the demand and also by imposing penalty of Rs.93,95,679/- on the Assessee.

3. Mr.K.Jayachandran, learned counsel for the petitioner submitted that the impugned order was passed in violation of principles of natural justice, as the petitioner was not given sufficient opportunity to place their objections against the show cause notice. He further contended that at the relevant point of time, the proprietor of the petitioner-Firm was admitted in the hospital and therefore, he could not effectively defend the show cause notice before the respondent. The learned counsel thus, submitted that on the ground of violation of principles of natural justice, this Court can entertain the present writ petition, even though the appellate remedy is provided under the Statute against the impugned order.

4. Per contra, the learned standing counsel for the respondent submitted that the impugned order was passed only after providing sufficient opportunity of hearing to the petitioner, which they failed to utilize. Therefore, he contended that the petitioner is not entitled to question the impugned proceedings as though the same was passed in violation of principles of natural justice.

5. Heard both sides and perused the impugned proceedings.

6. There is no dispute to the fact that as against the order in original passed by the respondent, a statutory appellate remedy is available to the petitioner before the concerned Appellate Authority. When such statutory remedy is made available to the petitioner, this Court will not entertain the present writ petition against the order in original unless it is pleaded and established that the impugned proceedings is passed without jurisdiction or in violation of principles of natural justice or it is erroneous on the face of it, which does not require roving probe to arrive at such conclusion. In this case, the learned counsel for the petitioner sought to invoke the jurisdiction of this Court under Article 226 of the Constitution of India only by contending that the respondent has violated the principles of natural justice. In order to consider the above said contention, it is better to appreciate the findings rendered by the respondent with regard to the conduct of the petitioner in defending the matter in pursuant to issuance of the show cause notice. Admittedly, the petitioner has not filed any reply to the show cause notice even though such notice dated 18.01.2017 was issued to the petitioner and the impugned order was passed only nearly after one year. The findings rendered at Paragraph No.6 of the order would show that several opportunities of personal hearing was given to the petitioner and every time the petitioner has only sought for adjourning the matter by saying one reason or another. Therefore, the respondent having waited for nearly one year and not receiving any reply from the petitioner and also finding

that the petitioner is not appearing before him for personal hearing, has chosen to pass the impugned order, based on the materials available before him. When such being the factual position, I do not think that the petitioner is justified in contending as though the principles of natural justice is violated.

7. Therefore, I am of the firm view that this Court cannot entertain this writ petition, as it is for the petitioner to agitate the matter before the Appellate Authority, by filing a statutory appeal and also by complying with other statutory requirements while filing such appeal. Since it is stated that the petitioner's proprietor was admitted in the hospital at one point of time, this Court is inclined to grant an indulgence to permit the petitioner to file such an appeal before the Appellate Authority.

8. Accordingly, this writ petition is disposed of, without expressing any view on the merits of the matter only with liberty to the petitioner to file a statutory appeal before the concerned Appellate Authority within a period of two weeks from the date of receipt of a copy of this order, by complying with all other statutory requirements for filing such appeal. If any such appeal is filed within the time stipulated supra, the concerned Appellate Authority shall consider the same and pass appropriate orders on merits and in accordance with law, without reference to the period of limitation. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Additional Commissioner
Office of the Principal Commissioner of GST &
Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Chennai-600 034.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.73255
+1cc to Mr.S.R.Sundar, Advocate, S.R.No.73671

W.P.No.28141 of 2018

GSP(16/11/2018)