IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.32669 of 2018
and
W.M.P.No.37875 of 2018

M/s.Aascar Film (P) Limited
No.9, 10th Avenue, Ashok Nagar
Chennai - 600 083
Rep. by its Managing Director V.Ravichandran ...Petitioner

Vs

The Commissioner
Office of the Commissioner of GST and Central Excise
Chennai South, 692, MHU Complex, 5th Floor
Anna Salai, Nandanam, Chennai - 600 035. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to Order in Original No.26/2018 dated 18.07.2018 passed by the respondent herein and to quash the same, insofar as, the said impugned order has been passed in total violation to the principles of natural justice, without jurisdiction and in excess of the authority conferred on the said respondent.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mrs.R.Hemalatha
Standing Counsel

O R D E R

Mrs.R.Hemalatha, learned standing counsel takes notice for the respondent. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. This Writ Petition is filed against the order in original No.26/2018 dated 18.07.2018.

3. Heard the learned counsel for the petitioner and the learned standing counsel for the respondent.

4. The learned counsel for the petitioner submitted that though an appeal is maintainable against the impugned order before the Customs Excise and Service Tax Appellate Tribunal, still the writ petition is maintainable, on the reason that the petitioner was not afforded with sufficient opportunity to defend the case before the Adjudicating Authority. The learned counsel contended that the demand itself is not valid in the eye of law and therefore, this writ petition is maintainable.

5. According to the learned counsel for the petitioner, though the petitioner has not filed their reply to the show cause notice at the first instance, the Adjudicating Authority should have given two more opportunities, by way of adjournment to file such reply, as contemplated under Section 33-A of the Central Excise Act, 1944.

6. Perusal of the facts and circumstances of the case and the order passed by the respondent, impugned in this writ petition does not support the above claim made by the learned counsel for the petitioner. Admittedly, the petitioner was issued with the show cause notice dated 13.01.2017, calling upon them to show cause within the time stipulated therein as to why the service rendered by them in relation to sale of space to products placement in the motion picture should not be classified as 'Services' under Section 65(B) read with 65B(51) and the services in relation to temporary transfer or permitting the use of enjoyment of copyrights should not be classified under 'copyright service' as per Section 65(zzzzt) upto 30.06.2012 or "services" under Section 65B(44) read with 658(51) of the Finance Act, 1995 with effect from 01.07.2012 and an amount of Rs.14,23,21,715/- towards the service tax, education cess and Higher Education cess not paid on the above said services provided by them and payable for the period from 01.04.2011 to 31.03.2015, should not be demanded from them in terms of the proviso to Section 73(1) of the Act.

7. It is seen that the petitioner after receipt of the said notice did not file any reply. On the other hand, the record of personal hearing made by the Adjudicating Authority on 21.05.2018 clearly discloses that the petitioner though repeatedly asked for extension of time to file reply, had not submitted any reply, even though such time was granted. When such being the factual position I do not think that the learned counsel for the petitioner is entitled to contend that the Adjudicating Authority has not given sufficient opportunity to the petitioner. Neither Section 33-A of the Central Excise Act,

1944, contemplates the opportunity as expected by the petitioner herein. Therefore, the order of adjudication passed by the respondent cannot be questioned before this Court under a writ jurisdiction, by complaining as if the principles of natural justice is violated.

8. Needless to say that if the petitioner is aggrieved against the impugned order touching upon the merits of the matter, it is open for them to file a statutory appeal before the Tribunal as clearly stated in the impugned order itself. Therefore, without expressing any view on the other merits of the contentions raised by the petitioner, this Writ Petition is disposed of, by granting liberty to the petitioner to file such statutory appeal before the Appellate Tribunal within a period of four weeks from the date of receipt of a copy of this order, by complying with other statutory requirements. If any such appeal is filed, the same shall be considered and decided on its own merits and in accordance with law without reference to the period of limitation. It is also open to the petitioner to raise all the objections before the Tribunal, while filing such appeal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

sni/mk

To

The Commissioner
Office of the Commissioner of GST and Central Excise
Chennai South, 692, MHU Complex, 5th Floor
Anna Salai, Nandanam, Chennai - 600 035

+1cc to Mr.R.Hemalatha, Advocate SR.No.86121

+1cc to Mr.N.Viswanathan, Advocate SR.No.86002

W.P.No.32669 of 2018

KJ(CO)
GMY(22/01/2019)