

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.33366 of 2018
and
W.M.P.No.38741 of 2018

M/s.Inno Infra Pvt Ltd,
Represented by its Director
Mr.Sajid Ahmed Sathak Abdul Kadhir
No.5, Giri Road, T.Nagar,
Chennai - 600 017.

...Petitioner

Vs

The Assistant Commissioner, GST and Central Excise
Triplicane Division,
No.26/1, 6th Floor (Annex Building),
Mahatma Gandhi Road,
Nungambakkam, 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 Order-in-Original No.01/2017 dated 31.10.2017 passed by the respondent and quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap
For Respondent : Mr.Rajkumar Jabhak
Standing Counsel

ORDER

Mr.Rajkumar Jabhak, learned Standing Counsel takes notice for the respondent. By consent of the parties, this 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 31.10.2017, wherein and whereby, the Adjudicating Authority has confirmed the payment of Rs.15,04,591/-, towards service tax liability and also ordered payment of appropriate interest. The Adjudicating Authority further imposed penalty of Rs.15,04,591/- representing 100% tax liability.

3. Heard both sides.

4. Admittedly, as against the impugned order, a statutory appeal lies before the Commissioner (Appeals), by complying with the other statutory requirements. However, the petitioner did not file any such appeal in time. Now, the merits of the order passed by the respondent is sought to be canvassed before this Court by filing this writ petition, after a period of nearly one year and two months. Since a statutory appellate remedy is available to the petitioner, this Court is not inclined to entertain this writ petition, that too, when the points raised in this writ petition are touching upon the merits of the order and not on the jurisdictional aspect.

5. The learned counsel appearing for the petitioner submitted that the petitioner was not in a position to file the appeal immediately, due to severe financial crunch and however, the petitioner is willing to pay the tax liability and interest in monthly instalments, if the penalty imposed on the petitioner is revoked.

6. I do not think that the petitioner can canvas all these points before this Court in this Writ Petition as it is for them to agitate the matter before the Appellate Authority by filing a statutory appeal. Since the petitioner has chosen to pay the tax liability and interest and they are aggrieved only against the imposition of penalty, this Court is of the view that an opportunity may be given to the petitioner to agitate the matter before the Appellate Authority, by filing a regular appeal. Therefore, without expressing any view on the merits of the contentions raised by the petitioner as against the imposition of penalty, this writ petition is disposed of by granting liberty to the petitioner to file a statutory appeal before the concerned Appellate Authority viz., the Commissioner of Appeals, within a period of two weeks from the date of receipt of a copy of this order, by complying with the other statutory requirements. If any such appeal is filed, the Appellate Authority shall entertain the same without reference to the period of limitation and pass orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Appellate Authority within a period of six weeks from the date of filing of the appeal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sni/mk

To

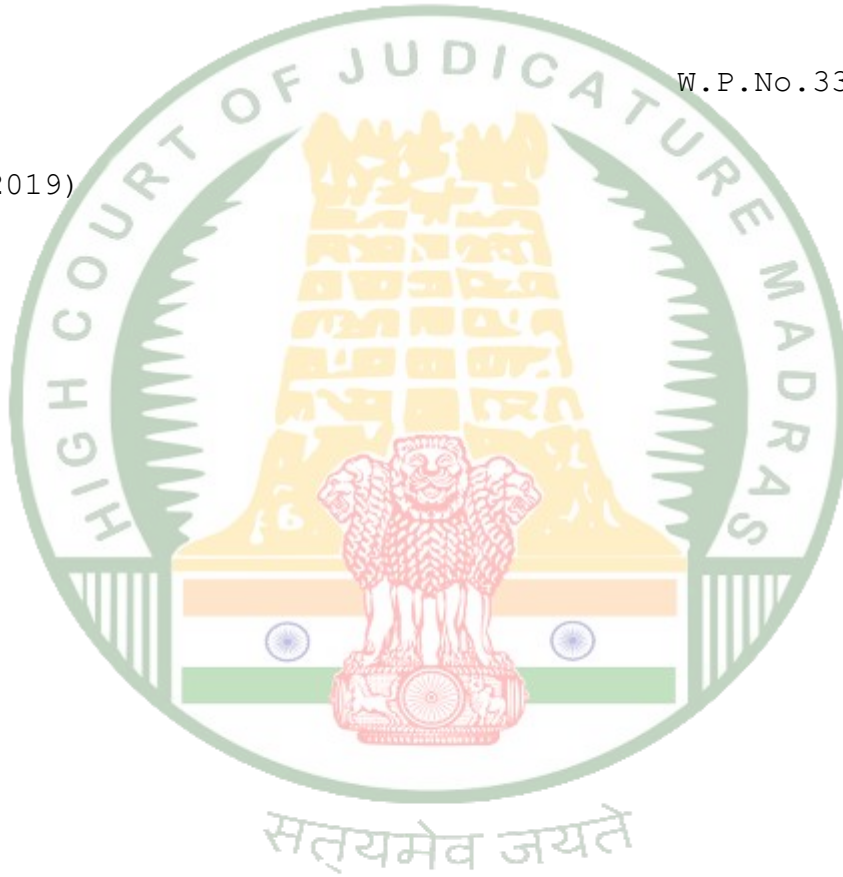
The Assistant Commissioner, GST and Central Excise
Triplicane Division,
No.26/1, 6th Floor (Annex Building),
Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+lcc to Mr.ANR.Jayaprathap, Advocate, S.R.No. 88535

+lcc to Mr.Rajkumar Jhabhak Advocate, S.R.No. 88096

W.P.No.33366 of 2018

KS (CO)
GN (23/01/2019)



WEB COPY