BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.15101 of 2018
and
W.M.P.(MD)No.13676 of 2018

M/s.E.I.D.Parry (India) Ltd.,
Keel Arunmugam Road,
Kurumbur Village,
Aranthangi-Sillattur,
Pudukottai District - 607 105,
Rep. by its Senior Manager. : Petitioner

Vs.

1.The Joint Commissioner,
GST and Central Excise,
Tiruchirapalli,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001.

2.The Commissioner of GST and Central Excise,
No.1, Williams Road,
Cantonment, Tiruchirappalli-620 001.

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

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned Order-in-Original No.07/JOINTCOMMR/CE/2018, dated 14.02.2018 passed by the first respondent and quash the same.

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| For Petitioner | : Mr.AR.L.Sundaresan, Senior Counsel, For Ms.R.Charulatha |
| For Respondents 1&2 | : Mr.B.Vijay Karthikeyan |
| For Respondent No.3 | : Mr.Vijayaraja |

ORDER

The present Writ Petition is preferred against the Order-in-Original No.07/JOINTCOMMR/CE/2018, dated 14.02.2018, denying the CENVAT credit to the tune of Rs.1,74,08,326/- statutorily availed by the petitioner during the period from April,. 2015 to March, 2016 in complete violation of judicial discipline and principles of natural justice.

2. It is contended by the learned Senior Counsel appearing for the petitioner that the Order-in-Original was passed relying on a stay order of the Hon'ble Tribunal in Thyssenkrupp Industries (P) Ltd., Vs. CCE, Pune [2014-TIOL-1825-CESTAT-MUM]. According to the petitioner, it is a cardinal legal principle that the interim orders are not a binding precedent. The Hon'ble Supreme Court in the case of Amresh Tiwari vs. Lalta Prasad Dubey and another [2000(4) SCC 440], has held that it is settled law that interim orders, even though they may have been confirmed by the higher courts, never bind and do not prevent passing of contrary order at the stage of final hearing.

3. On the other hand, the Tribunal also failed to follow the binding precedents in respect of Rule 6(3) of Cenvat Credit Rules, 2004 and decided contrary to the dictum laid down. Therefore, it is the contention of the learned Senior Counsel that the authority has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice, which resulted in failure of justice. Therefore, he is entitled to maintain the Writ Petition.

4. Further, it is submitted that the remedy of appeal could not be exercised as the limitation prescribed under the Act had lapsed. Instead of availing the alternative remedy of appeal, which is an empty formality, the petitioner has approached this Court directly.

5. The learned Standing Counsel for the respondents 1 and 2 would rely on the judgment of the Hon'ble Supreme Court in Singh Enterprises vs. CCE [2008(3) SCC 70] and contend that the High Court cannot entertain a Writ Petition.

6. I have considered the materials placed before this Court.

7. A Full Bench of the Hon'ble Supreme Court in the case of Panoli Intermediate (India) Pvt. Ltd., vs. Union of India [2015(326) E.L.T. 532(Guj.)] has held that the High Court, in exercise of Article 226 of the Constitution of India, entertained the challenge to the Order-in-Original passed by the Adjudicating Authority in the following circumstances:

> "(A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or
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> (A.2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or
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> (A.3) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified.

(B) Resultantly, there is failure of justice or it has resulted into gross injustice.

We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the judge."

8. In the instant case, it is seen that the order passed by the original authority is contrary to judicial discipline, in flagrant disregard to law and rules and also in violation of principles of natural justice and the resultant position is, there is failure of justice in relying on interim order and ignoring the binding precedents. In such circumstances, I am of the considered view that instead of admitting the matter and keep it pending for years and indulging in re-appreciation of evidence or evaluation of evidence or correction of errors, it is always better to leave it to the concerned adjudicating authority to pass an order in compliance with judicial discipline and principles of natural justice. Therefore, this Court is inclined to set aside the Order-in-Original No.07/JOINTCOMMR/CE/2018, dated 14.02.2018 and remand the matter back to the first respondent for consideration afresh.

9.In fine, the impugned Order-in-Original No.07/JOINTCOMMR/CE/2018, dated 14.02.2018, is set aside and the matter is remanded back to the respondent for consideration afresh on a condition that the petitioner deposits 10% of the tax due, within a period of four weeks from the date of receipt of a copy of this order.

10. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Joint Commissioner,
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2.The Commissioner of GST and Central Excise,
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3.Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.



+1cc to M/S.B.Vijay Karthikeyan, Advocate SR.No. 72622
+1cc to M/S.Lakshmi Kumaran, Advocate SR.No. 72864

Order made in
W.P(MD)No.15101 of 2018
12.07.2018

sml
JM/KAK/SAR 4/10.08.2018/4P/6C