BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15574 of 2018

and

W.M.P.(MD)No.13989 of 2018

Tvl.Quantum Coal Energy (P) Ltd.,
Represented by its Chief Executive Officer P.Vijayakumar,
5-4-44, Plot No.65,
Kalainagar 3rd Street, Sambandar Alangulam,
Madurai 625017. ... Petitioner

Vs.

1.The Union of India
Rep. by its Secretary to Government,
Ministry of Finance (Department of Revenue)
New Delhi.

2.The Additional Director General,
Directorate General of Central Excise,
Inteligence, Chennai Zonal Unit,
C-3, C-Wing, Rajaji Bhavan,
Besant Nagar, Chennai-90.

3.The Principal Commissioner of Central Excise,
(Audit Circle Madurai),
Central Revenue Building,
Bibi Kulam, Madurai-625 002.

4.The Deputy Director,
Directorate General of Central Excise Intelligence,
Coimbatore Regional Unit,
No.53, First Main Road,
Meena Estate, Sowripalayam,
Coimbatore-28.

5.The Joint Commissioner of Central Excise,
(Service Tax),
Central Revenue Building,
Bibi Kulam,
Madurai-625 002. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fifth respondent in his order in Original No.MDU-ST-JC-13-2018, 28.03.2018 in file No.V/ST/15/151/2015-Adjn received by the petitioner on 02.06.2018 and quash the same and to direct the respondents to pass order on the written submission filed by the petitioner dated 12.04.2017.

For Petitioner : Mr.M.MD.Ibrahim Ali

For R1 : Mr.P.Dharmaraj

For R2 to R5 :Mr.B.Vijay Karthikeyan

ORDER

The writ petitioner is a registered dealer under TNVAT Act, 2006. They are dealing in coal. They purchase the coal on high seas sale basis. The nature of transactions which the writ petitioner has with the stevedore is set out in paragraph No.3 of the affidavit filed in support of the writ petition.

2.While so, the Senior Intelligence Officer of the Coimbatore regional unit issued a letter dated 20.02.2013 calling for certain details from the writ petitioner. The said letter came to be issued following the receipt of information that the writ petitioner was claiming reimbursement of cargo handling charges from their clients. There was a raid on the petitioner's premises on 08.04.2014. Certain statement were obtained from the Chief Executive Officer of the writ petitioner company. After issuing the show cause notice and hearing the writ petitioner, the fifth respondent came to the conclusion that the writ petitioner had contravened the provisions of the Finance Act, 1994 and after receiving amounts from their buyers towards reimbursement of stevedoring charges, they failed to remit the appropriate service tax to the department. Thus, according to the fifth respondent, there has been willful suppression of the receipt of the stevedoring charges. The fifth respondent issued the impugned order confirming the demand set out in the notice and also levied interest and penalty. Questioning the same, the writ petition has been filed.

3.The learned counsel appearing for the writ petitioner raised a number of contentions and reiterated the stand taken in the affidavit filed in support of the writ petition.

4.I am of the view that an effective alternative remedy of appeal lies before the Commissioner of Central Excise (Appeals-I). It is this alternative remedy of appeal which the petitioner must necessarily exhaust. The appellate authority can address the issues relating to the facts as well as laws. When consideration of the contentions raised by the petitioner would involve delving into the facts, I am of the view that they cannot be adjudged or adjudicated under Article 226 of the Constitution of India. In matters having financial implications, the assessee must necessarily avail the statutory remedy available to them. They cannot be allowed to bypass them and invoke the writ jurisdiction of this Court.

5.I am of the view that if the contentions raised by the writ petitioner are dealt with, they would definitely prejudice their case before the appellate authority. Therefore, I consciously refrain from going into the merits of the matter. The writ petition stands dismissed. The writ petitioner is given liberty to move the appellate authority. If an appeal is filed within a period of four weeks from the date of receipt of a copy of this order, the appellate authority will entertain the same without reference to limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Union of India
Rep. by its Secretary to Government,
Ministry of Finance (Department of Revenue)
New Delhi.

2.The Additional Director General,
Directorate General of Central Excise,
Inteligence, Chennai Zonal Unit,
C-3, C-Wing, Rajaji Bhavan,
Besant Nagar, Chennai-90.

3.The Principal Commissioner of Central Excise,
(Audit Circle Madurai),
Central Revenue Building,
Bibi Kulam, Madurai-625 002.

4.The Deputy Director,
Directorate General of Central Excise Intelligence,
Coimbatore Regional Unit,
No.53, First Main Road,
Meena Estate, Sowripalayam,
Coimbatore-28.

5.The Joint Commissioner of Central Excise,
(Service Tax),
Central Revenue Building,
Bibi Kulam,
Madurai-625 002.

+1 cc to Mr.B.Vijay Karthikeyan , Advocate SR.No.101919
+1 cc to Mr.P.Dharmaraj , Advocate SR.No.101927
+1 cc to Mr.M.MD.Ibrahim Ali , Advocate SR.No.101826

rmi

W.P.(MD)No.15574 of 2018
and
W.M.P.(MD)No.13989 of 2018
21.12.2018

_KM/(23.05.2019) 4P 9C