



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) .Nos.18107 and 18108 of 2018

Bharat Heavy Electricals Limited,
rep. by its Senior Deputy General Manager,
Power Plant Piping Unit, No.848/1,
NH 210 Road, 71 Thirumayam,
Pudukkottai - 622507.

... Petitioner in
both the petitions

Vs.

The Assistant Commissioner of CGST &
Central Excise, GST & Central Excise Division,
Pon Nagar, Medical College Road,
Thanjavur - 613 007.

... Respondent in
both the petitions

PRAYER in W.P. (MD) .No.18107/2018:-

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in File No.C.No.V/Ch.84/18/10/2018-Cx. Refund comprising of Order-In-Original No.16 of 2018-CE(R), dated 14.06.2018 and quash the same as illegal, arbitrary and unconstitutional and to consequently direct the respondent to pass fresh orders on merits, after giving an opportunity to the petitioner to file their reply to the show cause notice dated 25.05.2018 and attend personal hearing.

PRAYER in W.P. (MD) .No.18108/2018:-

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in File No.C.No.V/STC/18/01/2018-ST.Refund, comprising of Order-In-Original No.1/2018-ST(R) dated 14.06.2018 and quash the same as illegal, arbitrary and unconstitutional and to consequently direct the respondent to pass fresh orders on merits, after giving an opportunity to the petitioner to file their reply to the show cause notice No.02/2018-ST(R), dated 25.05.2018 and attend personal hearing.

For petitioner in
both the petitions : Mr.S.P.Maharajan

For respondent in
both the petitions : Mr.R.Aravindan,

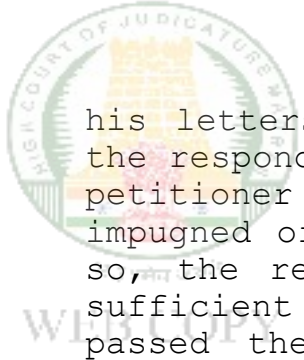
COMMON ORDER

Both the Writ Petitions have been filed by the petitioner challenging the orders dated 14.06.2018 passed by the respondent rejecting the claim of the petitioner for refund of the amount paid towards Education Cess and Secondary and Higher Education Cess and Krishi Kalyan Cess.

2. The petitioner is a Public Sector Undertaking incorporated under the provisions of the Companies Act, 1956 and engaged in manufacturing of boilers, steam generators, parts of water tube boilers, valves, parts of valves, pressure vessels and heat exchangers, parts of pressure vessels and heat exchangers, falling under the respective tariff of the first schedule to the Central Excise Tariff Act, 2005 and is taking input tax credit of Educational Cess and Secondary & Higher Education Cess and Krishi Kalyan Cess on the goods used as inputs and utilizing the same input tax credit for clearance of the final products. As the petitioner could not carry forward the amount paid under the said cesses, on 30.12.2017 he had filed petitions in Letter Ref.PPPU/ACC/Excise/2017/16 and Letter Ref.PPPU/ACC/Excise/2017/17 claiming refund of the amount. After receipt of the said petitions, on 25.05.2018 the respondent issued Show Cause Notices requiring the petitioner to produce documents and to appear before him on 04.06.2018. The said notices reached the petitioner only on 04.06.2018 i.e., the date on which the hearing was scheduled. Therefore, the petitioner has sent letters, dated 05.06.2018, requesting the respondent to grant fifteen days time to appear before him along with the documents. But, without considering the said request and without providing sufficient opportunity for personal hearing, the respondent has passed the impugned orders, dated 14.06.2018 rejecting the refund claim of the petitioner. As there is a violation of principles of natural justice, the petitioner has filed these petitions challenging the said impugned orders.

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

4. The respondent has stated in the impugned orders that though the show cause notices issued on 25.05.2018, the petitioner has not furnished any documents and has not appeared before him on 04.06.2018 and therefore, the subject refund claim has been decided on the basis of evidence / record available on record. According to the petitioner, the said show cause notices, dated 25.05.2018, requiring the petitioner to submit documents and to appear before him on 04.06.2018 for personal hearing, was served to him only on 04.06.2018. The said contention of the petitioner has not been disputed by the respondent. Further, though the petitioner intimated the respondent about the delayed service of notice and requested 15 days time for appearing before the respondent, through



his letters dated 05.06.2018, the same has not been considered by the respondent. The said letters, dated 05.06.2018, submitted by the petitioner have not been mentioned in the impugned orders. The impugned orders have been passed only on 14.06.2018. When that be so, the respondent could have passed the orders after providing sufficient opportunity to the petitioner. But, it has hurriedly passed the impugned orders violating the principles of natural justice. As there is a clear violation of principles of natural justice, this Court is inclined to set aside the impugned orders and remand the same for fresh consideration after providing sufficient opportunity to the petitioner.

5. In view of the above, both the impugned orders are set aside and the same are remanded to the file of the respondent for fresh consideration. The petitioner is directed to appear before the respondent for personal hearing on 04.09.2018, along with the relevant documents. On such appearance of the petitioner, the respondent shall consider the cases of the petitioner and pass appropriate orders on merits and in accordance with law within a period of one week thereafter.

6. Both the Writ Petitions stand disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

+2cc to M/S.S.P.Maharajan, Advocate SR.No. 80222

+1cc to M/S.R.Aravindan, Advocate SR.No. 80580

W.P(MD).Nos.18107 and 18108 of 2018
27.08.2018

gcg

JM/SKN RSK/SAR 4/28.08.2018/3P/4C