BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.1538 of 2018
C.M.P.(MD) No.10964 of 2018
against W.P.(MD) No.10481/2018

T.K.T.Thilagaratnam ... Appellant/Petitioner

vs.

1. The Commissioner of Central Excise,
   Central Revenue Building,
   Bibikulam, Madurai - 625 002.
2. The Superintendent of Central Excise (Adjudication)
   Central Revenue Building,
   Bibikulam,
   Madurai – 625 002. ... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, against the order passed in W.P.(MD) No.10481/2018 dated 11.09.2018.

Prayer in WP(MD)No.10481 of 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st respondent in his order file numbers V / 36 / 15 / 21 / 2011-Adjn Vol-II (Tirunelveli) dated 28/03/2018 sent on 11/04/2018 and quash the same and to direct the respondents to afford on opportunity to cross examine the witnesses and thereafter afford on opportunity of personal hearing for the show cause notice No.58/2010 dated 12/11/2010 in so far as the petitioner is concerned.

For Petitioner : Mr.M.Mohammed Ibrahim Ali

JUDGMENT
(Judgment of the Court was delivered by T.RAJA, J.)

This Writ Appeal is directed against the impugned order passed by the learned Judge on 11.09.2018 in W.P.(MD) No.10481 of 2018 setting aside the impugned order dated 28.03.2018 issued by the first respondent herein and remanding the matter back to the first respondent to proceed from the stage of personal hearing.

2. Learned counsel for the appellant would submit that when the learned Judge has agreed that the case of the writ petitioner for setting aside the impugned order and remanding the same back to the file of the first respondent has not considered his further case that he is also entitled to cross examine the available witnesses, we deferred from the said contentions raised before us. The reason is that the learned single Judge in the order specifically mentioned that the first respondent is directed to issue notice fixing the date of personal hearing and also scrupulously follow the order passed in W.P.(MD) Nos.1106 and 1108 of 2013 dated 29.01.2013. It is necessary to extract the relevant portion of the said order passed by this Court on 29.01.2013, as under:

> “In view of the above, this impugned order is set aside and the matter is remanded back to the file of the first respondent to proceed from the stage of personal hearing. The first respondent is directed to issue notice fixing the date for personal hearing, scrupulously follow the order passed in W.P.(MD) Nos.1106 to 1108 of 2013 dated 29.01.2013 and after providing sufficient opportunity to the petitioners, pass appropriate orders on merits and in accordance with law. The said exercise shall be completed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners shall cooperate with the first respondent for the disposal of the case within the above stipulated time.”

3. When the impugned order directing the first respondent to scrupulously follow the direction given by this Court was passed on 29.01.2013 in W.P.(MD) Nos.1106 to 1108 of 2013 and those persons, whose statements/documents/reports are relied upon will also be made available for cross examination, the apprehension made by the appellant that the personal hearing will be proceeded without allowing the appellant to cross examine the available witnesses is wholly unwarranted. We also emphasize that the observations made by the learned single Judge that the petitioner shall be given all opportunities to even cross examine all witnesses will also take care of the apprehension of the petitioner, after providing sufficient opportunity to the petitioner, the first respondent to pass appropriate orders on merits and in accordance with law, as mentioned above.

4. With the observation, the writ appeal is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Commissioner of Central Excise,
   Central Revenue Building,
   Bibikulam, Madurai - 625 002.

2. The Superintendent of Central Excise (Adjudication)
   Central Revenue Building,
   Bibikulam, Madurai - 625 002.

+ 1 CC TO Mr.MOHAMED IBRAHIM ALI, ADVOCATE IN SR No. 94354

RR
TE/SV/SAR-4 : 17/12/2018 : 3P/4C

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and C.M.P.(MD) No.10964 of 2018
02.11.2018