BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.09.2018**
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.18907 of 2018
and
W.M.P.(MD).No.16741 of 2018

K.V.R.Engineering Contractor,
rep. by its Proprietor,
V.Ravi, .. Petitioner

Vs.

1.The Commissioner,
Central Excise and Service Tax,
No.1, Williams Road,
Cantonment,
Trichy.

2.The Deputy Commissioner,
Central Excise and Service Tax,
Karur Division,
No.15, Gowripuram Extension area,
Anna Nagar Main Road,
Karur.

3.The Assistant Commissioner,
Central Excise and Service Tax,
Karur Division,
No.15, Gowripuram Extension Area,
Anna Nagar Main Road,
Karur. .. Respondents

PRAYER: 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 pertaining to the impugned order passed by the 2nd respondent vide in his proceedings dated 31.01.2017, vide C.No.V/ST/15/23/2016-ST.Adjn/OrderNo:08/2017-ST and consequential order passed by the 2nd respondent, vide his proceedings in C.No.IV/16/08/2018-ST.TRC, dated 23.03.2018 under Section 87 clause (b) of the Finance Act, 1994 and vide his proceedings in 142(1)(a) & (B) of the Customs Act, 1962 and quash the same as ultra vires and direct the 2nd respondent to conduct fresh enquiry.

For Petitioner : Mr.K.Balasubramani

For respondent : Mr.R.Aravindan

ORDER

The petitioner is a Contractor. He has entered into a contract with Tamil Nadu News Print and Papers limited, Kagithapuram, Karur District for providing some services and according to the contract, in some of the work the service tax to be paid by the petitioner and in some of the work the service tax to be paid by the TNPL. While so, the petitioner met with an accident on 14.04.2015 and due to which his right hip bone was completely damaged and he took treatment till 2017. As the petitioner was not in a position to complete the work awarded by TNPL, TNPL shut down the work order on 27.09.2016. While so, on 03.01.2017, the third respondent issued a show cause notice for non payment of service tax. Due to demonetization and health issues, the petitioner could not file objection and he requested time to file objection before the 3rd respondent. However, the second respondent had issued an enquiry notice and after receipt the said notice, the petitioner appeared before the 2nd respondent on 09.08.2017 and requested time to file objections and to fix a consultant to represent his case. However, due to health problem, the petitioner could not participate in the enquiry. But, the 2nd respondent has passed the impugned order on 31.10.2017 and subsequently, passed consequential order dated 23.03.2018. Challenging the said orders, the petitioner is before this Court.

2. Heard the learned counsel appearing for both sides and perused the records carefully.

3. The only ground on which the petitioner sought to set aside the impugned orders is that only due to health problems, he could not file objections and appear before the respondent for personal hearing and therefore, one more opportunity may be given to the petitioner to file objections and appear before the respondent for personal hearing as a last chance. In order to substantiate his contention, he has produced discharge summaries. The learned counsel appearing for the respondent objected to grant such relief.

4. A perusal of the impugned orders would go to show that the petitioner has been given opportunities to file his objections and for personal hearing, and it is the petitioner who has failed to avail such opportunities. However, considering the health problems stated by the petitioner and also considering the fact that the impugned order is an *ex parte* order and in the interest of justice, this Court is inclined to provide one more opportunity to the petitioner to substantiate his case before the respondent as a last chance and thus, this Court is inclined to set aside the impugned orders and to remand the matter for fresh consideration based on the objections to be submitted by the petitioner.

5. In view of the above, the impugned orders passed by the second respondent are set aside and the matter is remanded to the file of the second respondent. The petitioner is directed to approach the second respondent and file his objection, along with the relevant documents, if any, within a period of one week from the date of receipt of a copy of this order. After receipt of such objections, the second respondent shall fix a date for personal hearing and after providing an opportunity of personal hearing to the petitioner, the second respondent shall pass appropriate orders on merits and in accordance with law within a period four weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records.

6. This Writ Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(PROTOCOL)

/True Copy/

Sub Assistant Registrar(CS II)

gcg

To
1.The Commissioner,
Central Excise and Service Tax,
No.1, Williams Road, Cantonment, Trichy.

2.The Deputy Commissioner,
Central Excise and Service Tax,
Karur Division,
No.15, Gowripuram Extension area,
Anna Nagar Main Road, Karur.

3.The Assistant Commissioner,
Central Excise and Service Tax,
Karur Division, No.15, Gowripuram Extension Area,
Anna Nagar Main Road, Karur.

1CC TO MR. R. ARAVINDAN, ADVOCATE SR 85550
1CC TO MR. K. BAALASUBRAMANI, ADVCATE SR 85278

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Order made in W.P(MD)No.18907 of 2018

19.09.2018