IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.754 of 2019
and
WMP.No.831 of 2019

M/s.Popular Maruthi Painting Works
Represented by its Partner Ms.T.Kanchana
Having Office at No.7, Selvaganapathy Koil Street,
Narmada Nagar, Ullagaram,
Chennai-600 091.
...Petitioner

vs.

1. The Additional Commissioner of GST & Central Excise
   Chennai South Commissionerate
   692, M.H.U. Complex, Nandanam
   Chennai-600 035.

2. The Commissioner of GST & Central Excise (Appeals-II)
   Newry Towers, No.2054-I, 2nd Avenue
   12th Main Road, Anna Nagar,
   Chennai-600 040. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the Order-in-Appeal No.466 of 2018 (CTA-II) dated 28.09.2018 passed by the 2nd respondent confirming and enhancing the Order-in-Original No.1/2018 dated 22.01.2018 and quash the same.

For Petitioner : Mr.Joseph Prabakar
For Respondents : Mr.K.Magesh
Standing Counsel

O R D E R

Mr.K.Magesh, learned standing counsel takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order in appeal No.466 of 2018 dated 28.09.2018 passed by the second respondent herein. The petitioner suffered an order-in-original dated 22.01.2018, wherein and whereby, the Adjudicating Authority

determined and confirmed the amount of Rs.1,58,803/- towards service tax, appropriated the said amount paid by the Assessee, confirmed the demand of interest, appropriated the amount of Rs.24,870/- towards the interest and imposed penalty of Rs.1,58,803/-. The Revenue went on appeal before the First Appellate Authority viz., the second respondent herein. The First Appellate Authority has disposed the appeal by confirming the demand of Rs.4,77,542/-, appropriated the amount of tax already paid towards the demand and imposed the amount of Rs.4,77,542/- as penalty. Challenging the said order, the petitioner is before this Court.

3. Mr.Joseph Prabakar, learned counsel for the petitioner submitted that even though an appellate remedy is provided as against the order passed by the second respondent, the petitioner being an individual cannot be forced to go before such authority and therefore, this Court can consider and decide this writ petition on merits. He further contended that the very issuance of the show cause notice was a defective one and consequently, any number of proceedings passed based on such show cause notice cannot be sustained. In support of his contention, the learned counsel relied on a decision of this Court in the case of M.Suganthi Vs. Asstt. Commr. of C. Ex., Pollachi, reported in 2011 (23) S.T.R. 7 (Mad.).

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. Even though this Court has clearly indicated that the petitioner can avail the opportunity of filing further appeal before the Tribunal, since such opportunity is not seized of by the learned counsel for the petitioner and on the other hand, he insisted this Court to entertain this writ petition and pass orders on merits, I am dealing with the merits of the matter to find out as to whether this writ petition is entertainable or not. It is the contention of the learned counsel for the petitioner that the very initiation of the proceedings by way of issuing show cause notice is bad. However, the fact remains that the order of adjudication passed by the Adjudicating Authority in order-in-original dated 22.01.2018 has not been challenged by the petitioner. In other words, the said order is challenged by the Revenue before the second respondent. Perusal of the order passed by the Adjudicating Authority would clearly indicate that though he has re-quantified the tax liability as Rs.4,77,542/-, has however, determined and confirmed the demand of Rs.1,58,803/- alone, while passing the penultimate portion of the order. The said mistake in the order was pointed out by the Revenue before the First Appellate Authority, who in turn rightly found that the amount of demand having been rightly re-quantified as Rs.4,77,542/- by the Adjudicating Authority, confirmation of the demand by the Adjudicating Authority in the

order should have been made only in respect of such re-quantified amount of Rs.4,77,542/- and not in respect of the differential service tax amount of Rs.1,58,803/-. When I find that the Adjudicating Authority himself has re-quantified the tax liability as Rs.4,77,542/- and the same is reiterated by the First Appellate Authority, the petitioner is not entitled to canvass the correctness or otherwise of the order passed by the Appellate Authority, that too, by filing the present writ petition, especially, when he has not chosen to challenge the order passed by the Adjudicating Authority.

6. Needless to say that the learned counsel for the petitioner is not justified in contending that the very issuance of the show cause notice is a defective one, without there being any challenge to the order-in-original by the petitioner. Therefore, I find that the decision relied on by the learned counsel for the petitioner reported in 2011 (23) S.T.R. 7 (Mad.), is not factually applicable to the facts and circumstances of the case. The learned counsel for the petitioner also contended that even though certain objections raised by the petitioner against the very initiation of the proceedings, at the time of hearing the appeal was recorded, the same was not considered. I failed to understand as to how the learned counsel for the petitioner is justified in making such submission before this Court, when the fact remains that the petitioner has accepted the order-in-original and not challenged the same before the Appellate Authority. Therefore, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Additional Commissioner of GST & Central Excise
Chennai South Commissionerate
692, M.H.U. Complex, Nandanam
Chennai-600 035.

2.The Commissioner of GST & Central Excise (Appeals-II)
Newry Towers, No.2054-I, 2nd Avenue
12th Main Road, Anna Nagar,
Chennai-600 040.

+1 CC to Joseph Prabakar, Advocate sr 2610.
+1 CC to Mr.K.Magesh, Advocate sr 2123.
+1 CC to Spl.Govt. Pleader(T) sr 3503.

WP No.754 of 2019

SP(31/01/2019)