

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19058 of 2017

and

W.M.P.Nos.20576 & 20577 of 2017

Semmalar Associates,
Rep. by its Proprietrix,
3/627 G1, Vivekananda Nagar,
Somayampalayam,
Coimbatore - 641108.Petitioner

Vs

1. The Assistant Commissioner of
Central Excise,
Coimbatore I Division,
1441, ELGI Building,
Trichy Road, Coimbatore - 641018.
2. The Additional Commissioner of
Central Excise,
6/7, A.T.D. Street,
Race Course Road,
Coimbatore - 641018.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records relating to the order passed by the first respondent in Order-in-Original SI.No.04/2017-ST(AC) dated 27.03.2017 and quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondents: Mr.A.P.Srinivas, SPC

ORDER

The short point involved in the present writ petition is as to whether the respondents are justified in passing the impugned order without issuance of a notice under Section 73(1) of the Finance Act, 1994. This proposition is opposed by the Department stating that a notice is not required when the petitioner had voluntarily declared the tax dues and the penalty is also based on the same declaration made.

2. In my view, such a ground cannot be directly taken by invoking Article 226 of the Constitution of India when an appeal remedy is available under Section 85 of the Finance Act, 1994. As such, if the petitioner is granted liberty to file an appeal at this stage by extending the limitation prescribed therein, the ends of justice would be secured.

3. In the light of the foregoing observations and without going into the merits of the grounds raised by the petitioner in the present writ petition, the petitioner is granted liberty to file an appeal against the impugned order dated 27.03.2017 before the concerned authority, within a period of 30 days from today. The appellate authority shall dispose of such an appeal on its own merits as expeditiously as possible.

4. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk
To

1. The Assistant Commissioner of
Central Excise,
Coimbatore I Division,
1441, ELGI Building,
Trichy Road, Coimbatore - 641018.

2. The Additional Commissioner of
Central Excise,
6/7, A.T.D. Street,
Race Course Road,
Coimbatore - 641018.

+1cc to Mr. A.P.Srinivas, Advocate SR.No. 45435

+1cc to Mr.J.Shankarraman , Advocate SR.No. 44921

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A.SK(07/06/2019)