BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.(MD)No.590 of 2019
and
C.M.P(MD)Nos.4836 and 4837 of 2019
and
W.P.(MD)No.6694 of 2019
and
WMP(MD)Nos 5346 to 5348 and 7090 of 2019

W.A.(MD)No.590 of 2019:

M/s.Gemini iron and steel private limited,
Rep. by its authorised representative
M.Muthuvappa,
Plot No.E 29 to E 31, Industrial Estate,
Thuvakudi, Thiruchirappalli-620 015. : Appellant/Petitioner

Vs.

1.The Assistant Commissioner of GST & Central Excise Division-I,
Office of the Commissioner of Central Excise & Service Tax, No.1, Williams Road,
Cantonment, Tiruchirappalli - 620 001.

2.The Superintendent of GST & Central Excise, Thiruverumbur Range
Superintendent, Civil Maintenance Building
BHEL Township, Tiruchirappalli-620 014.

3.The Joint Commissioner of GST and Central Excise,
Office of the Commissioner of Central Excise & Service Tax, No.1
Williams Road, Cantonment,
Tiruchirappalli - 620 001.

4.The Commissioner of GST & Central Excise (Appeals),
Office of the Commissioner of GST and Central Excise and Service Tax,
Coimbatore, No.6/7, A.T.Devaraj Street,
Coimbatore - 641 018.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order dated 15.04.2019 passed in W.M.P.(MD)No.7090 of 2019 in W.P.(MD)No.6694 of 2019.

For Appellant : Ms.P.Bagyalakshmi

For Respondents : Mr.B.Vijay Karthikeyan

W.P.(MD)No.6694 of 2019:

M/s.Gemini iron and steel private limited,
Rep. by its authorised representative
M.Muthuvappa,
Plot No.E 29 to E 31, Industrial Estate,
Thuvakudi, Thiruchirappalli-620 015. : Petitioner

Vs.

1.The Assistant Commissioner of GST &
Central Excise Division-I,
Office of the Commissioner of Central Excise &
Service Tax, No.1, Williams Road,
Cantonment, Tiruchirappalli – 620 001.

2.The Superintendent of GST &
Central Excise, Thiruverumbur Range
Superintendent, Civil Maintenance Building
BHEL Township, Tiruchirappalli-620 014.

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Williams Road, Cantonment,
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Office of the Commissioner of GST and Central
Excise and Service Tax,
Coimbatore, No.6/7, A.T.Devaraj Street,
Race Course Road, Coimbatore – 641 018.
: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified mandamus to call for the entire records pertaining to the proceedings of the 1st Respondent in C.No. IV/16/08/2018-Misc., dated 04.01.2019 in issuing the Detention Notice and quash the same and consequently direct the 1st Respondent to drop all further proceedings issued pursuant to the order in C.No.V/Ch.72/15/51/2014-C.Ex. Adjn dated 9/1/2018.

For Petitioner : Ms.P.Bagyalakshmi

For Respondents : Mr.B.Vijay Karthikeyan

JUDGMENT

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[Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.]**

The Writ Appeal is directed against the interim order passed by the Writ Court, in WMP(MD)No.7090 of 2019 in W.P.(MD)No.6694 of 2019, dated 15.04.2019. The said Miscellaneous Petition was filed by the writ petitioner/appellant herein seeking for modification of the earlier interim order passed by the Writ Court, dated 29.03.2019 in W.P.(MD)No.5347 of 2019 staying the impugned detention order, dated 29.03.2019 on a condition that the writ petitioner makes deposit of 40% of the amount demanded.

2.The Writ Court, while considering the above modification petition, has chosen to pass the present impugned order in this writ appeal by dismissing the said modification petition by observing that there is no change of circumstances pointed out or any error in the earlier order so as to modify the same.

3.It is seen that the Commissioner, GST and Central Excise, Trichirappalli, passed an order in Original No.01/2018, Central Excise, dated 09.01.2018 against the writ petitioner, wherein and whereby he confirmed the demand of an amount of Rs.70,01,123/- (Rupees Seventy Lakhs One Thousand One Hundred and Twenty Three only) etc.,, as found in the said order. According to the writ petitioner, the said order in Original was not at all served on them, while the consequential detention notice, dated 04.01.2019 alone was served. The said detention notice was put to challenge before the Writ Court in the above writ petition, wherein the above interim order of stay with condition as stated supra was passed.

4.The present writ appeal is filed by contending that when the writ petitioner is willing to file a statutory appeal, available against the order in Original, before the concerned appellate authority, the Writ Court ought to have modified the condition of paying 40% of the demanded amount, since the petitioner, if files the appeal, is bound to pay only 7 ½ % of the duty demanded, as contemplated in the order in Original itself, before the Commissioner (Appeals). Therefore, the learned counsel for the writ petitioner submitted that in effect the petitioner seeks permission to withdraw the writ petition itself with liberty to file a statutory appeal before the appellate authority, challenging the very order in Original, since what is put to challenge is only consequential detention notice.

5.On the other hand, the learned counsel for the respondents submitted that the order in Original was served on the petitioner well in time and the revenue has proof for such service. Therefore, he contended that the writ petitioner is not justified in claiming that the order in Original was not served on them.

6.We have heard the learned counsel appearing for the appellant and the learned standing counsel appearing for the respondents.

7.There is no dispute to the fact that the main writ petition before the Writ Court was filed challenging only the consequential detention notice, dated 04.01.2019 with further direction to drop all further proceedings issued pursuant to the order in Original dated 09.01.2018. Needless to state that when an order in Original was passed against the petitioner by the competent authority, without challenging the same, the petitioner is not entitled to challenge the consequential proceedings viz., the detention notice. Hence, in our considered view, the Writ petition itself is not maintainable. However, as the learned counsel for the writ petitioner/appellant herein is expressing the desire of the writ petitioner to file such statutory appeal before the appellate authority challenging the very order in original, this writ appeal as well as the writ petition are disposed of without expressing any view on the merits of the matter on the following terms:-

"(a).The petitioner is permitted to withdraw the main writ petition itself and accordingly, the writ petition itself is dismissed as withdrawn with liberty to file an appeal before the appellate authority challenging the order in Original, however by explaining the delay for filing such an appeal; and

(b).On filing such appeal with delay, the appellate authority shall consider the reason for the delay and thereafter, pass appropriate orders on the delay petition on merits and in accordance with law, based on the facts and circumstances placed by both the parties."

No costs. The connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar(CS-)

Rj2

To

1.The Assistant Commissioner of GST &
Central Excise Division-I,
Office of the Commissioner of Central Excise &
Service Tax, No.1, Williams Road,
Cantonment, Tiruchirappalli - 620 001.

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Office of the Commissioner of GST and Central
Excise and Service Tax,
Coimbatore, No.6/7, A.T.Devaraj Street,
Coimbatore - 641 018.

+1 CC to M/s.P.BAGYALAKSHMI, Advocate(SR-67697[F] dated 10/06/2019)

+2CC to Mr.B.VIJAY KARTHIKEYAN,Advocate(SR-67623[F]dated 10/06/2019)

+1 CC to M/s.P.BAGYALAKSHMI,Advocate(SR-68010[F] dated 11/06/2019)

Judgment delivered in
W.A.(MD)No.590 of 2019
and
W.P.(MD)No.6694 of 2019
Dated: **10.06.2019**

ES/18.06.2019/5P/9C