BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.05.2019
CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P.(MD)No.12015 of 2019
&
W.M.P.(MD)No.9055 of 2019

M/s.Kamaraj College of Engineering & Technology,
Rep. by its Secretary Mr.R.Mahesh Kumar,
SPGC Nagar,
PB No.12, Virudhunagar - 626 001. .. Petitioner

Vs

1.Superintendent,
Office of the Superintendent of Central GST & Central Excise,
Thirumangalam Range,
27, Rajaram Street,
Jawahar Nagar,
Tirumangalam - 625 706.

2.The Assistant Commissioner of CGST,
Madurai 1st Division and Adjudication Section,
Hqrs Officer, Bibikulam,
Madurai - 625 002. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Ceritorarified Mandamus, calling for the records in File comprising O.C.No.271/2019, dated 03.05.2019, on the file of the first respondent, quash the same and for consequential direction forbearing the respondents herein from taking any further action till the outcome of the decision by the Hon'ble CESTAT Tribunal, Chennai, in the Appeal filed by the petitioner in S.T.42291/2018.

For Petitioner :Ms.Cynduja Crishnan
for Mr.S.P.Maharajan

For Respondents :Mr.Vijay Karthikeyan
Senior Standing Counsel

ORDER

The petitioner has filed this Writ Petition seeking for issuance of a Writ of Ceritorarified Mandamus, to quash the File comprising O.C.No.271/2019, dated 03.05.2019, on the file of the first respondent and forbear the respondents herein from taking any further action till the outcome of the decision by the Hon'ble CESTAT Tribunal, Chennai, in the Appeal filed by the petitioner in S.T.42291/2018.

2.Mr.Vijay Karthikeyan, learned Senior Standing counsel takes notice for the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.The case of the petitioner College is that it is affiliated to Anna University and providing education to the Students in the field of Engineering. In addition to the activities of conducting regular classes in relation to engineering courses, the petitioner College is also providing/conducting training/coaching classes to the students, namely, Entrepreneurship Development Course, Placement Training Program and Personality Development Program and were charging and collecting certain fees for the said courses. It appears that the same is classifiable under 'Commercial Training or Coaching Services' and is subjected to levy of service tax prior to 01.07.2012 and that from 01.07.2012 it is leviable to service tax under the category of ''services'' and therefore, a show cause notice, dated 19.10.2015, was issued to the petitioner to show cause as to why an amount of Rs.93,48,500/- being the amount of service tax not paid on the value of taxable service of Rs.7,83,06,225/-, charged and collected towards the activities classified under the category of 'Commercial Training or Coaching Service'. Thereafter, the petitioner submitted a detailed reply to the same on 05.04.2016 and written submissions on 22.02.2017. Subsequently, the adjudicating authority in the Order-in-Original No.MDU-ST-JC-05-2017, dated 28.03.2017, after due process of law, had dropped the entire proceedings initiated in the show cause notice No.21/2015-ST, dated 19.10.2015. Aggrieved by the said dropping order, the Department filed an appeal and the appellate authority, vide order dated 04.07.2018, had partially allowed the appeal and set aside the Order-in-Original, dated 28.03.2017 and remitted the case back to the original adjudicating authority for the limited purpose of (i) quantification of service tax liability for the above period for which demand has been confirmed; (ii) confirming the demand of interest; and (iii) imposing penalties under various Sections of the Finance Act, 1994, as proposed in the show cause notice No.21/2015-ST, dated 19.10.2015. Aggrieved by the said order, the petitioner College had preferred an appeal before the Customs Excise and Service Tax Appellate Tribunal [CESTAT], Chennai, vide Appeal No.ST/42291/2018, after depositing the pre-deposit amount of 10% as required by the statute and the same is pending.

4.Thereafter, the first respondent, vide O.C.No.270 of 2019, dated 03.04.2019, had requested the petitioner to provide the details of amount collected under various commercial coaching services for the period from 08.04.2011 to 30.06.2012 and 01.04.2013 to 10.07.2014 immediately for denovo adjudication as ordered by the Commissioner (Appeals), Madurai. Thereafter, the first respondent vide O.C.No.271 of 2019, dated 03.05.2019, directed the petitioner to provide the copy of the stay order issued by CESTAT, Chennai, against the Commissioner (Appeal)'s above order or to furnish the details of amount, collected under various commercial coaching services *viz.*, Entrepreneurship Development, Placement Program and Personality Development Program etc., for the period from 08.04.2011 to 30.06.2012 and 01.04.2013 to 10.07.2014 immediately to issue denovo adjudication order. Aggrieved by the said order, the petitioner has come up with the present writ petition.

5.The learned counsel appearing for the petitioner submitted that when the appellate authority seized off the matter, the original authority conducting denovo proceedings is illegal and unsustainable and subsequently, if the CESTAT passed any order, it will affect the interest of the petitioner. In the present case, the petitioner had already paid the mandatory pre-deposit of 10% as required by the statute. The learned counsel further submitted that till the disposal of the appeal, this Court may issue a direction to the respondents not to take any coercive steps against the petitioner.

6.The learned Senior Standing Counsel appearing for the respondents submitted that instead of granting interim order in this case, this Court may issue a direction to the CESTAT to dispose of the appeal within a time frame to be fixed by this Court and till the disposal of the said appeal, the respondents will not take any coercive steps against the petitioner.

7.Considering the facts and circumstances of the case and considering the fact that the petitioner had already complied with the pre-deposit condition and when the appellate authority seized off the matter, the original authority conducting denovo proceedings is unsustainable one, this Court directs the CESTAT to dispose of the appeal, within a period of six months from the date of receipt of a copy of this order. Till the disposal of the said appeal, the respondents shall not take any coercive steps against the petitioner.

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

Sd/-

Assistant Registrar (VO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The President,
Customs Excise and Service Tax Appellate Tribunal,
Chennai.

2.The Superintendent,
Office of the Superintendent of Central GST &
Central Excise,
Thirumangalam Range,
27, Rajaram Street,
Jawahar Nagar,
Tirumangalam - 625 706.

3.The Assistant Commissioner of CGST,
Madurai 1st Division and Adjudication Section,
Hqrs Officer, Bibikulam,
Madurai - 625 002.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-65801[F] dated 15/05/2019)

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-65950[F] dated 16/05/2019)

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W.P.(MD)No.12015 of 2019
15.05.2019

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