IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.19623 of 2013
and
M.P.No.1 of 2013

Sri Kumaran Transport
Rep. by its Proprietor
K.Chandran ... Petitioner

Vs.

1.The Deputy Commissioner of Central Excise
Tambaram, Division No.I
MHU Complex, 7th Floor
No.40, Ranga Colony
Rajakilpakkam
Chennai 600 073

2.M/s.Triump International (India) Private Ltd.,
No.240B, Sengundram Village
Singaperumal Koil
Kancheepuram District 603 204

...Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to call for the records of the first respondent dated 08.01.2013 in reference No.C.No.V/15/CAB/28/2010 - Service Tax Arrears and quash the same.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Ms.R.Hemalatha
Senior Standing Counsel for R1

Mr.T.Gowthaman for R2

ORDER

This Writ Petition has been filed, challenging the recovery notice dated 08.01.2013 issued by the 1st respondent, pursuant to the order-in-original dated 26.12.2011, demanding arrears of revenue to the tune of Rs.4,74,204/- along with interest and penalty.

2.Today, when the matter was taken up for consideration, the learned counsel for the petitioner submitted that prior to the filing of this writ petition, the petitioner has filed an appeal against the order-in-original dated 26.12.2011 passed by the 1st respondent and by order dated 09.02.2016 in Order-in-appeal No.81 / 2016 (STA-I), the Appellate Authority viz., the Commissioner of Service Tax (Appeals-1), Chennai disposed of the said appeal, by upholding the order-in-original with regard to the demand and interest, but set aside the penalties imposed under Sections 70, 77 and 78 of the Finance Act. The learned counsel also submitted that seeking refund of penalty, the petitioner has already made a representation before the first respondent, which is pending and hence, the same may be directed to be considered by the first respondent.

3.Heard the learned counsel appearing for the respective respondents, who conceded the submissions so made by the learned counsel for the petitioner.

4.This Court perused the order dated 09.02.2016 passed in the appeal filed by the petitioner, wherein, the Appellate Authority, after considering the contentions made by the parties and upon perusal of the documents and also based on the decisions rendered in Atul Ltd. v. CCE, Daman [2009 (246) ELT.744 (TRI-AHMD.)]; Indian Coffee Workers' Co-op Society Limited v. CCE & ST, Allahabad [2014 (34) STR. 546 (All.)]; and CST, Bangalore v. Motor World [2012 (27) STR.225 (Kar.)], while upholding the demand and interest, set aside the order passed by the 1st respondent with regard to penalty imposed under Sections 70, 77 and 78 of the Act. Pursuant to the same, the petitioner is entitled for refund of penalty already paid by them. It is reported that a representation seeking refund of penalty, was pending before the first respondent. Hence, this Court directs the first respondent to consider the representation already made by the petitioner and refund the penalty already made by them, if not refunded earlier, within a period of four weeks from the date of receipt of a copy of this order.

5.This writ petition stands disposed of accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kas

To

1.The Deputy Commissioner of Central Excise
Tambaram, Division No.I
MHU Complex, 7th Floor
No.40, Ranga Colony
Rajakilpakkam
Chennai 600 073

2.The Appellate Authority,
The Commissioner of Service Tax (Appeals-1)
Chennai.

+1cc to M/s.R.Hemalatha, Advocate, Senior Standing Counsel for Customs, SR.No.18471.
+1cc to Mr.S.Senthilnathan, Advocate, SR.No.18074
+1cc to Mr.T.Gowthaman, Advocate, SR.No.18480

rli(22/05/2020)

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