IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.693 of 2020

M/s.Krome Led Lighting Technologies Pvt Ltd.,
rep. By its Director S.Srinivasan,
Plot No.3, Ekambaram Industrial Estate,
Alapakkam, Porur, Chennai 600 116 ... petitioner

vs.

I. THE ASSISTANT COMMISSIONER
O/o The Assistant Commissioner of GST & Central Excise
Valasaravakkam Division
Chennai South Commissionerate,
Newry Towers, Plot No. 2054, I Block
12th Main Road, II Avenue
Anna Nagar, Chennai - 600 040

2. The Superintendent
O/o The Superintendent of GST & Central Excise
Valasaravakkam Division
Chennai South Commissionerate
Newry Towers, Plot No.2054, I Block
12th Main Road, II Avenue
Anna Nagar, Chennai - 600 040 ... Respondents

Prayer ::- Appeal filed against the order dated 16.07.2018 in W.P.No.11388 of 2018.

Prayer in WP. 11388/2018: To issue a Writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ of call for the records on the file of the 2nd respondent vide proceedings bearing O.C. No.14/ 2018 dated 07.02.2018 and to quash the same as manifestly erroneous unjust arbitrary and illegal and consequently direct the respondents to consider and take appropriate action for effecting transfer of petitioners lying accumulated CENVAT CREDIT from excise License bearing No.AADCK759OFEM005 to the petitioners existing Excise License Bearing No.AADCK7590FEM006.

For petitioner :: Mr.A.V.Arun
For Respondents :: Mr.A.P.Srinivas

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2.Heard Mr.A.V.Arun, learned counsel for the appellant and Mr.A.P.Srinivas, learned counsel for the respondents.

3.By the impugned order dated 16.07.2018, the learned Single Judge has only relegated the appellant to appear before the Assessing Officer and submit their application and the Assessing Officer was directed to forward such application to the Nodal Officer, who in turn would forward it to the concerned Grievance Committee. The relevant paragraph of the order passed by the learned Single Judge is quoted below for ready reference:-

> 11. Thus, writ petitions stand disposed of with the following direction:
>
> 1) The respective Commissioner of GST and Central excise are directed to appoint the Nodal Officer / Officers for the State of Tamil Nadu, if not already appointed, within a period of 2 weeks from the date of receipt of a copy of this order.
>
> 2) The petitioners/ Assessees are directed to submit their applications in accordance with Paragraph 8 of the Circular dated 03.04.2018 within a period of two weeks from the date of receipt of a copy of this order to their respective Assessing Officers / jurisdictional officer/GST Officers. The Assessing Officers are directed to forward the application to the Nodal Officers within a period of one week. The Nodal officer nominated will, in consultation with the GSTN shall take note of the grievances expressed by the petitioners/assessees and forward the same to the grievance committee, who in turn would take an appropriate decision in the matter within a period of three weeks from the date on which the applications are received in proper form. No costs, Consequently, the connected miscellaneous petitions are closed.

4.The learned counsel for the appellant Mr.A.V.Arun, sought to urge before us that the case of the Assessee was slightly different, in the sense that the Superintendent of GST and Central Excise has already passed an order on 7.2.2018 which was against the assessee. He further submitted that after that event, the Adjudicating Authority has passed an order, against which the appeal filed by the assessee is pending before the Commissioner of Appeals. He therefore submitted that the Appellate Authority may be allowed to decide the appeal on merits and in accordance with law.

5.On the other hand, Mr.A.P.Srinivas, learned counsel for the Department submitted that the learned Single Judge has not made any observation against the Assessee and the learned Single Judge has only remitted the matter to the Nodal Officer and Nodal Committee and therefore, there is nothing wrong in the order passed by the learned Single Judge, which deserves to be intervened by the Division Bench of this court.

6.Having heard the learned counsel for the parties, we are of the opinion that since the learned Single Judge has only directed the appellant to raise their grievance before the Nodal Officer/Nodal Committee, there is nothing to interfere with the said order by the Division Bench in the present intra court appeal. The case of the Assessee is admittedly pending before the learned Commissioner of Appeals as of now. Therefore, we are of the considered opinion that any observation on the merits of the case is likely to prejudice the case of the parties before us, either the assessee or the Revenue. Therefore, we decline to make any observation on the merits of the case. In the circumstances of the case, we dispose of this writ appeal by relegating the appellant before the learned Commissioner of Appeals, where the appeal is pending and we expect, the said Authority to decide the appeal in accordance with law, after giving an opportunity of hearing to both the sides, as expeditiously as possible.

7.With this observation, the writ appeal is disposed of. No costs. Consequently, C.M.P.No.9482 of 2020 is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

tar

To

I. THE ASSISTANT COMMISSIONER
O/o The Assistant Commissioner of GST & Central Excise
Valasaravakkam Division
Chennai South Commissionerate,
Newry Towers, Plot No. 2054, I Block
12th Main Road, II Avenue
Anna Nagar, Chennai - 600 040

2. The Superintendent
O/o The Superintendent of GST & Central Excise
Valasaravakkam Division
Chennai South Commissionerate
Newry Towers, Plot No.2054, I Block
12th Main Road, II Avenue
Anna Nagar, Chennai - 600 040

W.A.No.693 of 2020

AK(CO)
GN(02/11/2020)