IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 14589 of 2018
and
W.M.P. Nos. 17227 and 17228 of 2018

M/s. Advantech Data Link Solutions,
Represented by its Proprietor,
Srivari Gardens,
No. 74, 7th Floor, 644 VKK Menon Road,
New Sidhapudhur,
Coimbatore – 641 044. ... Petitioner

-vs-

1. The Deputy Commissioner of Central Excise,
   Customs & Service Tax,
   Coimbatore – III Division,
   1441, ELGI Building,
   Coimbatore – 641 018.

2. The Commissioner (Appeals),
   Office of the Commissioner of GST & Central Excise (Appeals),
   6/7, A.T.D. Street, Race Course,
   Coimbatore – 641 018. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the First Respondent in order dated 21.12.2016 in "Order in Original" Order Sl. No. 44/2016 (DC) and quash the same.

For Petitioner : Mr. Adithya Reddy
For Respondents: Mr. S.R.Sundar, Standing Counsel



O R D E R
(through video conference)

Heard Mr. Adithya Reddy, Learned Counsel for the Petitioner and Mr. S.R.Sundar, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent by Order in C. No.

V/ITS/15/69/2015-ST Adjn dated 21.12.2016 had passed an order under the provisions of the Finance Act, 1994 (hereinafter referred to as the 'Act' for short) in respect of the Petitioner, who had received a copy of that order on 31.12.2016. The Petitioner was entitled to prefer appeal against that order within a period of two months from the date of its receipt under Section 85 of the Act before the Second Respondent, who has been empowered to condone delay in filing such appeal for an extended period of one month, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner had presented the appeal before the Second Respondent on 19.04.2017, which was beyond the maximum limitation period of three months from the date of receipt of the copy of the order passed by the First Respondent. The Second Respondent by Order-in-Appeal No. CMB-CEX-000-APP-353-17 dated 18.12.2017 refused to entertain that time barred appeal. Aggrieved by the Order in C. No. V/ITS/15/ 69/2015-ST Adjn dated 21.12.2016 passed by the Second Respondent, the Petitioner has filed this Writ Petition.

3. The Hon'ble Supreme Court of India in Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. As a corollary, it would follow that it would also not be possible to entertain this Writ Petition challenging the order of the Second Respondent, who has rightly refused to take that time barred appeal to file.

4. Having regard to the aforesaid legal position, it is not possible for this Court to express any view on the correctness or otherwise on the merits of the controversy involved in the matter.

5. In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. costs.



Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Deputy Commissioner of Central Excise,
   Customs & Service Tax,
   Coimbatore - III Division,
   1441, ELGI Building,
   Coimbatore - 641 018.

2. The Commissioner (Appeals),
   Office of the Commissioner of GST & Central Excise (Appeals),
   6/7, A.T.D. Street, Race Course,
   Coimbatore - 641 018.

+1cc to Mr.SR.Sundar, Advocate, S.R.No. 38330

W.P. No. 14589 of 2018

SRA(CO)
GN(11/12/2020)