IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

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

W.P.NO.25058 OF 2017
AND
W.M.P.NO.26466 OF 2017

Protech Structure Private Limited
Represented by its Managing Director
No.A-3, Sorrento Castle
No.31/16, Club Road
Chetpet, Chennai - 600 031. ... Petitioner

-vs-

1. The Principal Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai - 600 034.

2. The Additional Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai - 600 034. ... 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 respondent No.2 in his proceedings C.No.IV/09/06/2016-ST-1/Adj, Order-in-Original No.70/2016-17, (ST-1) dated 31.03.2017 and quash the same.

For Petitioner : Mr.S.Malar Mannan

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

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O R D E R
(through video conference)

Heard Mr.S.Malar Mannan, Learned Counsel for the Petitioner and Mr.A.P.Srinivas, Learned Senior Standing Counsel appearing for the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

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2. The Second Respondent passed the order in Order-in-Original No.70/2016-17 (ST-1) dated 31.03.2017 determining the liability for Service Tax under provisions of the Finance Act, 1994 (hereinafter referred to as the 'Act' for short) in respect of the Petitioner, who had received copy of that order on 20.04.2017. The Petitioner was entitled to prefer appeal against that order under Section 85 of the Act, within a period of two months from the date of its receipt before the Appellate Authority, 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 did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 15.09.2017 challenging the order passed by the Second Respondent beyond the maximum limitation period of three months from the date of receipt of copy of that order.

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. Having regard to that 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.

In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Principal Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai - 600 034.

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2. The Additional Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.37728
+1cc to Mr.S.Ramesh, Advocate, S.R.No.38020

W.P.No.25058 of 2017

SR(CO)
CS/04/12/2020

HIGH COURT OF JUDICATURE MADRAS
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