IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.No.895 of 2021
and
WMP.No.975 of 2021

[Video Conferencing]

M/s. S.R.Raja Cements
Rep by its Proprietor
No.34, Ramakrishna Street
West Tambaram
Chennai - 600 045. ....Petitioner

-Vs.-

The Assistant Commissioner (ST)
Tambaram Assessment Circle
Chennai - 600 045. .....Respondent

Prayer :-
Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN/33130881362/2010-11, quash the order dated 29.05.2019 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.Richardson Wilson, AGP.,

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 29.05.2019 which has been passed purportedly to give effect to the order dated 07.01.2019 passed by the Appellate Tribunal in STA.Nos.211 to 215 of 2015.

2.These Appeals pertain to the assessment years 2008-09 to 2013-14. The Appellate Tribunal by the aforesaid order had set aside the order of the Appellate Commissioner and thereby restored the case to the original authority who had passed orders on 13.10.2014 for the assessment year 2010-11 and also for other assessment years.

3.The petitioner had meanwhile filed an appeal before the Hon'ble Division Bench of this Court against the order of the

Appellate Tribunal dated 07.01.2019 in T.C.R Nos.11 to 15 of 2020 which appeal came to be disposed by an order dated 03.02.2021. By the aforesaid order, the penalty which was upheld by the Appellate Tribunal has been set aside. The relevant portion of the said decision is extracted hereunder:

> "16. For the assessment year 2010~11, the amendment, having been brought into force with effect from 19.8.2010, has fallen in the middle of the assessment year, which commenced from 01.4.2010. This aspect should have been noted by the Assessing Officer. But, there was no reference to the same nor the Revenue raised any issue with regard to that before the Tribunal.
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> 17. .....
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> 18. .....
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> 19. In addition to that, what was alleged was that the input tax credit was wrongly availed. This finding of the Assessing Officer was held to be factually incorrect as the receipts were not sale, but bank charges and interest, where the cheques had bounced. The concern expressed by the learned Special Government Pleader is with regard to the effect of Section 27(2) qua Section 27(4) of the Act. In our considered view, such an issue does not arise for consideration in these revisions and since it being a legal question, it is left open to be agitated before the appropriate forum.
>
> 20. The above finding rendered will parallelly enure in favour of the assessee in respect of equal time addition made for the assessment year 2013~14, which was set aside by the First Appellate Authority, which order we confirm in this common judgment.
>
> 21. In fine,
>
> (i) the question, which arose for consideration namely as to whether Section 63 of the Act contemplates a total embargo on the First Appellate Authority or the Tribunal to admit documents is answered in favour of the petitioner/assessee;
>
> (ii) The other questions, which have been raised, are all factual in nature and as we have upheld the orders passed by the First Appellate Authority deleting penalty under Section 27(3)/27(4) of the Act as well as equal time addition, those questions do not arise for consideration."

4.The impugned order dated 29.05.2019 for the assessment year 2010-11 is prior to the order of the Division Bench of this High Court dated 03.02.2021 in T.C.R Nos.11 to 15 of 2020 which included the penalty which was upheld by the Appellate Tribunal for the assessment year 2010-11 which was the subject matter of the appeal before the Honble Division Bench in T.C.R Nos.11 to 15 of 2020.

5.Considering the same, I am inclined to quash the impugned order and remit the case back to the respondent to pass appropriate orders after considering the order of the Division Bench of this Court dated 03.02.2021 in T.C.R Nos.11 to 15 of 2020.

6.This exercise shall be carried out by the respondent within a period of four weeks from the date of receipt of a copy of this order. Considering the fact that the issue relating to the estimation has already been remanded back to the respondent by the Appellate Commissioner vide order dated 31.12.2014 and other issues, the respondent may also consider and pass consolidated order before issuing any recovery notice to the petitioner.

7.The Writ Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pgp

To
The Assistant Commissioner (ST)
Tambaram Assessment Circle
Chennai - 600 045.

+1 cc to Spl.Government Pleader(TAX) Sr.NO. 66821

W.P.No.895 of 2021

SVI(CO)
A.SK(06.01.2022)