IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.2952 of 2021
and
WMP. No.3315 of 2021

M/s. Ambadi Enterprises Limited,
(Formerly M/s. Ambadi Trading Company Limited), Rep. by its Director MM.Venkatachalam,
No. 43, Moor Street, Parry House,
5th Floor, Chennai - 600 001. ... Petitioner

Vs

1. The Department of Revenue,
   Ministry of Finance,
   Rep by its Joint Secretary,
   14, Hudco Vishala Building, "B" Wing,
   6th Floor, Bhikajicama Place,
   New Delhi 110 066.

2. The Commissioner of Central Excise,
   No.1, Foulks Compound, Annai Medu,
   Salem - 636 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records in File No. C. No. V / 52 / 15 / 207 /2001 - Cx Adj P. F. on the file of the second respondent comprising of the impugned order in Original No. 01 / 2020 - CEx. (JC) dated 04.12.2020, quash the same and for consequential direction directing the first respondent to hear the Petitioner before passing an order.

For Petitioner : Mr.P.Jayalakshmi

For Respondents : Mrs.Hema Muralikrishnan,
Senior Standing Counsel

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O R D E R

Heard Ms.P.Jayalakshmi, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondents.

2. The challenge is to an order-in-original dated 04.12.2020. The petitioner had earlier approached this Court by way of a Writ Petition in W.P.No.15517 of 2012 challenging an order-in-original dated 30.04.2012. The said Writ Petition came to be disposed by order dated 05.08.2020, adverse to the petitioner. However, at paragraph-20 of the aforesaid order, the learned single Judge set aside the penalty originally imposed under Section 11AC of the Central Excise Act, 1944 (in short 'Act') granting liberty to the second respondent, i.e., Commissioner of Central Excise to issue a show cause notice, if it was thought necessary, containing a proposal for the imposition of penalty afresh after giving opportunity to the petitioner. The entire exercise was time bound and was to be completed within a period of 12 weeks from the date of receipt of a copy of that order.

3. The order was followed by a show cause notice for the imposition of penalty dated 18.11.2020. The notice called for a reply in writing within one week as well as fixed a personal hearing on 30.11.2020 through video conference. It appears that in the meanwhile the petitioner has challenged the order of the learned single Judge. Vide letter dated 27.11.2020 the petitioner has brought to the notice of the respondent the details of filing of the Writ Appeal, requesting the Commissioner, Central Excise to keep the matter in abeyance till such time the Writ Appeal was heard. It is also not in dispute that on 30.11.2020, the petitioner as well as the second respondent had telephonically communicated with each other wherein the petitioner reiterated the request for keeping the matter in abeyance. This request was not acceded to by the Commissioner, who conveyed his intention to proceed with the matter bearing in mind the direction to complete the exercise in a time bound fashion. The petitioner however did not appear on that date and the impugned order has thus come to be passed consequent upon the direction of this Court in the earlier round of litigation.

4. In the light of the discussion as aforesaid, I am of the view that this is not a matter that would justify intervention under Article 226 of the Constitution of India. Admittedly, due opportunity has been provided to the petitioner prior to the passing of the impugned order. The petitioner, however was more inclined to pursue the Writ Appeal and thus did not avail of the opportunity that was extended. Incidentally, the Writ Appeal

has also come to be dismissed by order of the Division Bench dated 01.02.2021. Thus the petitioner is relegated to alternate remedy, if it so desires. If an appeal challenging the impugned order is filed within a period of eight (8) weeks from today, the same shall be taken on file by the respondents without reference to limitation, but ensuring compliance with all other statutory conditions.

5. This Writ Petition is accordingly dismissed. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Department of Revenue,
   Ministry of Finance,
   Rep by its Joint Secretary,
   14, Hudco Vishala Building, “B” Wing,
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   New Delhi 110 066.

2. The Commissioner of Central Excise,
   No.1, Foulks Compound, Annai Medu,
   Salem - 636 001.

+1CC to Mr.Muthu Venkataraman, Advocate, Sr.No.37940
+1CC to M/s.Hema Muralikrishnan, Advocate, Sr.No.37652

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GP (CO)
K.RK. (02.09.2021)