IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-06-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.27882 of 2016
And
WMP No.24048 of 2016

M/s.Pentagon Industrial Services,
Represented by its Partner : G.R.Subramani,
No.36, South Prakaram Street,
Kaladipet,
Thiruvottiyur,
Chennai-600 019.
.. Petitioner

vs.

1.The Assistant Commissioner of Service Tax,
Service Tax-I Commissionerate,
Newry Towers, First Floor,
Plot No.2054, 1st Block,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai-600 040.

2.The Deputy Commissioner/Designated Authority (VCES),
Office of the Commissioner of Service Tax,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar,
Chennai-600 040.
.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order No.041/2014 (VCES) dated 09.09.2014 passed by the second respondent and quash the same as without authority of law, arbitrary, beyond the scope of show cause notice, not sustainable in law.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.K.Umesh Rao,
Senior Standing Counsel.

O R D E R

The writ on hand is filed by the petitioner challenging the order impugned dated 09.09.2014 passed by the second respondent.

2. The Original Authority rejected the revised declaration dated 31.12.2013 filed by the petitioner on 01.01.2014 and therefore, the declarant is not entitled for the benefit under VCES Scheme 2013 in respect of the tax dues declared under original declaration dated 14.08.2013 as they did not pay the minimum of 50% of the tax dues declared.

3. The learned counsel for the petitioner disputed the said finding by stating that even opportunities were not given adequately to establish the case of the petitioner. Several grounds are raised in the writ petition regarding the declarations made and relied on by the respondents in the impugned order. However, all those disputed question of facts are to be adjudicated in an appeal by the Appellate Authority, namely, Commissioner of Service Tax.

4. The disputed question of facts deserve examination of documents and witnesses. Such an exercise cannot be undertaken in writ proceedings by the High Court.

5. The learned counsel for the petitioner is fair enough to bring to the notice of this Court about the judgment of this Court rendered on 11.06.2015 in WP No.21799 of 2014 in the case of Narasimha Mills Private Ltd vs. Commissioner of Central Excise (Appeals) and Another, wherein this Court held that an appeal under Section 85 of the Finance Act, 1994 is maintainable before the Commissioner of Service Tax and the aggrieved person is at liberty to prefer such an appeal. The mixed question of fact and law are to be decided by the Appellate Authority by affording an opportunity to the parties concerned.

6. The petitioner, in the present case, has raised several grounds in order to assail the impugned order. Under these circumstances, the petitioner is at liberty to prefer an appeal.

7. The relevant paragraph-18 of the judgment of this Court in the case of Narasimha Mills Private Ltd (cited supra), is extracted hereunder:-

"18. Further, it is relevant to note that the Service Tax Voluntary Compliance Encouragement Scheme, 2013 has been introduced by the Central Government, in exercise of the powers conferred by subsections (1) and (2) of section 114 of the Finance Act, 2013 (17 of 2013) with effect from 13.5.2013 by Notification 10/2013 and hence, it is not a self-contained code, but is to be construed as a part and parcel of the Chapter V of the Act, 1994 in view of the contents of section 105 of the Finance Act, 2013. Therefore, when the said scheme itself is construed as part and parcel of the Finance Act, all other provisions of the Act except to the extent specifically excluded would automatically apply to proceedings under the scheme and consequently, I am of the view that the order, dated 15.11.2013 passed by the Assistant Commissioner of Central Excise, the second respondent herein is appealable under Section 85 of the Act, 1994."

8. In view of such findings in the judgment of this Court in the case of Narasimha Mills Private Ltd (cited supra), the petitioner is at liberty to prefer an appeal before the Commissioner of Service Tax by following the procedures and in the event of receiving any such appeal from the petitioner, the Appellate Authority is bound to consider the same on merits and in accordance with law and by affording an opportunity to the petitioner and dispose of the said appeal as expeditiously as possible.

9. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Assistant Commissioner of Service Tax,
Service Tax-I Commissionerate,
Newry Towers, First Floor,
Plot No.2054, 1st Block,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai-600 040.

2.The Deputy Commissioner/Designated
Authority (VCES),
Office of the Commissioner of Service Tax,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar,
Chennai-600 040.

3.The Commissioner of Service Tax,
No.2054, I Block Newry Towers,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai-600 040.

+1cc to Mr.Umesh Rao, Advocate, S.R.No.28233

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UM(CO)
CB(22/07/2021)