



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17590 of 2014

and

M.P.No.1 of 2014

M/s.Kamachi Sponge and Power
Corporation Ltd.,
Rep.by its Director:Vinod Kothari,
No.86, 115-119, 123-125, Pathapalayam Village,
S.R.Kandigai Post,
Gummidipoondi.

...Petitioner

Vs

1. The Commissioner of Central Excise,
Chennai II Commissionerate,
No.692, MHU Complex,
Nandanam, Chennai.
2. The Joint Commissioner of Central Excise,
Chennai - II, Commissionerate,
No.692, MHU Complex, Nandanam,
Chennai.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records relating to the Statement of Demand No.49/2014 dated 20.05.2014 in C.No.V/15/38/2014-Cx.Adj.issued by the 2nd respondent and quash the same as illegal, without authority of law, unsustainable and contrary to law.

For Petitioner : Mr.M.A.Mudimannan

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
For Central Excise



O R D E R

The statement of demand issued by the 2nd respondent is under challenge in the present writ petition.

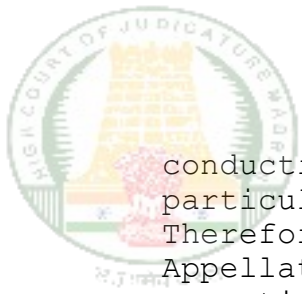
2. The impugned demand reveals that the assessee was called upon to state to the Joint Commissioner of Central Excise, Chennai II Commissionerate, within thirty days from the date of receipt regarding the demand raised in the impugned notice.

3. Instead of submitting objections on the impugned statement of demand, the petitioner has chosen to file the present writ petition.

4. The learned counsel for the petitioner made a submission that in respect of the similar demand, the petitioner preferred an appeal before the Customs Excise and Service Tax Appellate Tribunal [hereinafter referred to as 'CESTAT'] and the issues raised are sub judice. The interim stay is also granted by the CESTAT in the said appeal. However, the petitioner approached the CESTAT against the final order passed by the authority and as far as the present writ petition is concerned, it is only a statement of demand, asking the petitioner to submit their objections, enabling the authorities to consider and pass appropriate final orders.

5. The importance of an Appellate remedy for the redressal of grievances at no circumstances needs to be undermined by the Courts. The institutional respects are of paramount importance and the institutions created under the Statute must be allowed to exercise its duty in the manner prescribed, more specifically, for the purpose of adjudication of disputed facts with reference to the original documents and evidences made available. This being the legislative intention for the purpose of providing appeals in various Statutes. Dispensing with an Appellate remedy is only an exception and the rule is to prefer an appeal.

6. The Appellate authorities are the quasi judicial authorities and they are empowered to adjudicate both the factual aspects as well as the legal grounds raised. They are trained for such adjudication and the expertise in the field of taxation especially with the Appellate authorities will have certain relevance in the matters, more specifically, where factual disputes are involved. It is needless to state that High Court is not an expert body on taxation. However, the officials of the Tax Department are certainly aware of certain intricacies of the accountancy and the manner, in which, the traders are



conducting business and dealing with the accounts in a particular manner, more specifically, in a calculated manner. Therefore, in the interest of justice, the Court must allow the Appellate authority to go into such details and the manner of operation and accounting by the dealers and make a final finding and such a final finding would be of greater relevance and assistance for the purpose of exercise of the power of judicial review by the High Court under Article 226 of the Constitution of India.

7. The power of judicial review conferred under Article 226 of the Constitution of India is to scrutinize the processes, through which, an adjudication is made and a decision is taken by the competent authority in consonance with the provisions of the Statute, but not the decision itself. This being the scope of judicial review in a writ proceedings, the aggrieved person at the first instance must be allowed to exhaust the Appellate remedy, which will be of much assistance even for an aggrieved person to discuss about certain business transactions and accounting details before the authority, who is well versed with such matters.

8. The Courts are admitting writ petitions on one point, which may be convincing. However, there are many other points on facts are to be adjudicated. Keeping a writ petition pending for a longer period and not allowing a litigant to get a final decision in such matters would undoubtedly cause prejudice and hardship both to the litigant as well as the Revenue. Therefore, in such matters, where Appellate remedy is contemplated, High Court is expected to be cautious in admitting the matters in a routine manner. Wherever factual adjudications are required, then it is preferable to allow the aggrieved person to approach the authority at the first instance, enabling him to resolve the issues as expeditiously as possible. Contrarily, admitting a writ petition at one point and keep it pending for a prolonged period, then the prolongevity of the litigation would cause prejudice to the interest of the assessee and also to the Revenue as well. All the circumstances should be waived even at the admission stage by the High Courts. It is not as if, certain factual disputes can be adjudicated in a writ proceedings. Such an attempt by the High Court even may end in futile at the final hearing.

9. The learned counsel for the petitioner made a submission that pursuant to the interim orders passed by this Court, 10% of the demand has already been deposited by the petitioner. However, the petitioner has to submit their objections on the statement of demand, enabling the authorities to adjudicate the disputed issues and pass final orders.



10. This being the factum, the petitioner is at liberty to file their objections. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Central Excise,
Chennai II Commissionerate,
No.692, MHU Complex,
Nandanam, Chennai.
2. The Joint Commissioner of Central Excise,
Chennai - II, Commissionerate,
No.692, MHU Complex, Nandanam,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.40810

W.P.No.17590 of 2014

PCH (CO)
SU (07/09/2021)