BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.04.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.5924 of 2021
and
W.M.P.(MD)No.4642 of 2021

M/s.The India Cements Limited,
Represented by its Authorised Signatory,
T.S.Padamanabhan
DGM (Accounts)
Shankarnagar,
Tirunelveli District,
Tamil Nadu 627 357. ... Petitioner

-Vs-

1.The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai 625 002.

2.The Union of India
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-11001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the order in Original No.MDU-CEX-COM-56-63-2020, dated 30.12.2020 on the file of the first respondent insofar as it concerns with the confirmed demand of RS.63,55,18,886/- together with applicable interest and penalty and quash the same.

For Petitioner : Mr.P.S.Raman
Senior Counsel
for Mr.S.P.Maharajan
For R1 : Mr.S.Gurumoorthy
For R2 : Mr.G.Vidhya Maheswaran

ORDER

Heard the learned senior counsel appearing for the petitioner and the learned standing counsel appearing for the respondent.

2.The petitioner is engaged in manufacture of cements and is falling within the jurisdiction of the first respondent. The case on hand relates to liability of the petitioner for the period from January 2008 to October 2012 in respect of ISD credit and GTA credit. The issue has been pending for the last several years. The show cause notice was issued way back on 06.02.2009 and the petitioner had also submitted their reply. While passing the impugned order, the adjudicating authority had dropped proceedings in respect of ISD credit. However, the remaining credits were treated as GTA credits and the authority held against the petitioner herein. The same is questioned in this writ petition.

3.The learned Senior Counsel pointed out that the adjudicating authority called for verification report from the jurisdictional Range Officer, vide e-mail dated 21.12.2020. After receiving the same, the jurisdictional range officer sent a communication dated 29.12.2020_calling upon the petitioner to furnish the details sought for. It is seen that on the very next day ie., 30.12.2020, the petitioner submitted all the relevant details to the jurisdictional Range officer. It appears that even before receiving the petitioner's reply, the range officer informed the adjudicating authority vide e-mail dated 30.12.2020 that the noticee had not produced the called for documents for verification and that therefore, the claim of the noticee could not be verified. In that view of the matter, the adjudicating authority chose to pass the impugned order.

4.As rightly pointed out by the learned Senior Counsel for the petitioner, even though the adjudicating authority had sent e-mail to the jurisdictional range officer as early as on 21.12.2020, the Range Officer called for details from the petitioner only on 29.12.2020. There has been absolutely no delay on the part of the petitioner in responding to the said communication. On the very next day ie., 30.12.2020, all the sought for documents were made available and the details were also furnished. But even before that, the range officer informed the adjudicating officer that there was no response forthcoming from the assessee. It was in such a background, the impugned order came to be passed.

5.I am satisfied that there was absolutely no delay on the part of the petitioner. On the other hand, the relevant materials furnished by the petitioner were not taken note of before passing the impugned order on 30.12.2020. Therefore, the adjudicating authority has to necessarily revisit the issue by taking note of all the particulars and the materials furnished by the petitioner on 30.12.2020. Of-course, the adjudicating authority will take note of the earlier reply submitted by the petitioner herein. Interest of justice requires that personal hearing is afforded to the petitioner.

6.The learned Senior Counsel would state that the petitioner would appear promptly on the date to be fixed by the adjudicating authority for personal hearing and that they would not drag on the matter. The petitioner through his senior counsel gives an undertaking that they would extend the fullest co-operation for expeditious conclusion of the adjudication proceedings post remand.

7.Recording the said submission, the order impugned in the writ petition is quashed. The Writ Petition is allowed. The matter is remitted to the file of the first respondent to pass order afresh in accordance with law in the light of the observations made earlier. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

1) The Commissioner of CGST & Central Excise,
Central Revenue Buildings,
Nibikulam, Madurai-625 002.

2) The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-11001.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-15183[F] dated 01/04/2021)

+2 CC to M/s.G.VIDHYA MAHESWARAN, Advocate (SR-15202[F] dated 01/04/2021)

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