IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.1307 OF 2022
AND
W.M.P.NO.1442 OF 2022

(THROUGH VIDEO CONFERENCING)

M/s.INA Gopal & Constructions,
Represented by its Proprietor D.Bhoobalan,
No.3/86, Veni Nagar,
Makkinampatti, Pollachi - 642 003. ... Petitioner

Vs.

The Assistant Commissioner of GST & Central Excise,
Pollachi Division,
Jothi Nagar "D" Colony,
Pollachi - 642 001. ... Respondent

Prayer:

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in original Sl.No.15/2021-ST dated 29/30-11-2021 passed by the respondent in C.No.V/ST/15/11/2020-ST.Adj. and quash the same as arbitrary, contrary to law, barred by limitation.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

Mrs.R.Hemalatha, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. This writ petition is disposed at the time of admission considering the fact that the petitioner has an alternate remedy against the Impugned Order-in-Original No.15/2021-ST dated 29/30.11.2021 passed by the respondent.

3. It is the case of the petitioner that the issue is now squarely covered in terms of the decision of the Hon'ble Division Bench of this Court in Nandhini Constructions Vs The Government of India, Represented by its Secretary, Ministry of Finance, New Delhi and others passed in W.A.No.756 of 2018 dated 24.04.2018.

4. The learned counsel for the petitioner submits that the petitioner has referred to the aforesaid decision, however, the respondent has ignored the same and confirmed the demand in the Impugned Order.

5. Though the learned counsel for the petitioner has submitted that issue is covered by the decision of the Hon'ble Division Bench of this Court, it is noticed that the respondent has discussed the issue in the light of the submission of the petitioner in Paragraph:13.2 of the impugned order.

6. A specific reference has been made to the decision of the Hon'ble Division Bench of this Court and it has been distinguished. Whether the petitioner is indeed entitled to the benefit of the above decision or not would require a detailed consideration on facts and therefore the petitioner should workout the remedy before the Appellate Commissioner by filing an appeal as is contemplated under the provisions of the Finance Act, 1994 by pre-depositing 7.5% of the deposited tax under Section 35F of the Central Excise Tax, 1944 as made applicable to appeals/stay petitions against the orders passed under the Finance Act, 1994.

7. In view of the above observations, I am inclined to dispose this writ petition by giving liberty to the petitioner to file an appeal against the impugned Order-in-Original No.15/2021-ST dated 29/30.11.2021 within a period of fifteen days from the date of receipt of a copy of this order.

8. In case such an appeal is filed before the Appellate Commissioner and mandatory pre-deposit is made by the petitioner, the Appellate Commissioner shall consider and dispose the same on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order, duly considering the submissions of the petitioner as recording the issue should be covered by the decision of the Hon'ble Division Bench of this Court in Nandhini Constructions

case (referred to supra).

9. This writ petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Assistant Commissioner of GST & Central Excise,
Pollachi Division,
Jothi Nagar "D" Colony,
Pollachi - 642 001.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.6054
+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.6401

W.P.No.1307 of 2022
and
W.M.P.No.1442 of 2022

NR(CO)
PM/17/02/2022