IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.3577 of 2019
and
W.M.P.No.3918 of 2019

Alkraft Thermo Technologies Pvt. Ltd.,
35-A & B-1, Ambattur,
Industrial Estate,
Chennai - 600 058
Represented by Authorised Signatory
Mr.Sirajudeen ...Petitioner

Vs

Deputy Commissioner of GST & Central Excise,
Ambattur Division,
R-40: A1 100 Feet Road, Mogappair East
Chennai - 600 037. ...Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in Order-in-Original No.1/2019 (DC) dated 08.01.2019 demanding CENVAT Credit of Rs.10,36,905/- along with interest under Rule 14(1)(ii) and the Penalty of Rs.1,03,691/- under Rule 15(1) and to quash the same.

For Petitioner : Mr.HS Hredai

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The prayer sought herein is for a Writ of Certiorarified Mandamus calling for the records of the respondent in Order-in-Original No.1/2019 (DC) dated 08.01.2019 demanding CENVAT Credit of Rs.10,36,905/- along with interest under Rule 14(1)(ii) and the Penalty of Rs.1,03,691/- under Rule 15(1) and to quash the same.

2.The petitioner availed CENVAT Credit to the extent of Rs.10,36,905/- which was sought to be reversed and accordingly, a show cause notice was issued and a personal hearing was given to the petitioner on 30.07.2018. On the day, the petitioner representative as well as the Advocate on behalf of the petitioner appeared before the Adjudicating Authority and submitted their case on merits.

3.Though the case was heard through the personal hearing, the officer could not pass an order in the meanwhile he was transferred and a new officer had come in, therefore, the new officer had given further personal hearing to the petitioner on 03.01.2019, on the date the representative of the petitioner appeared and he sought for an adjournment on the ground that, some order is yet to be passed by the Court of law, where, the issue is pending. Therefore, awaiting the orders to be passed by the Court of law, a proceedings can be deferred for some time.

4.Though such a request was made, it is the complaint of the petitioner side, as projected by the learned counsel for the petitioner, such a time was not granted or deferred till the decision to be made by the Court of law, where, the issue was pending, as requested by the petitioner counsel and therefore, this action on the part of the respondent Revenue amounts to violation of principles of natural justice. Therefore, on that ground, the petitioner has chosen to challenge the Order-in-Original passed on 08.01.2019 before this Court in this writ petition .

5.Heard Mr.A.P.Srinivasan, learned Senior Standing Counsel appearing for the respondent, who would submit that, as against the Order-in-Original dated 08.01.2019, appeal can be filed before the Appellate Authority and whatever the grounds on merits urged before this Court in this writ petition and any other grounds can very well be urged by the petitioner before the Appellate Authority by whom the appeal to be filed by the petitioner may be directed to be decided on merits and in accordance with law.

6.I have considered the said submissions made by the learned counsel for both sides.

7.Insofar as entertaining a writ petition challenging the order like the present one which is impugned herein passed by the original authority by way of Order-in-Original when there is a clear alternative, effective statutory appeal remedy is available, the same should be exhausted, without which, the litigant normally would not be permitted to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution except under the following three circumstances (i) Violation of Principles of Natural Justice; (ii) Violation of Statute; and (iii) For want of jurisdiction.

8.In this case, even though it was canvassed by Mr.Hs

Hredai, learned counsel appearing for the petitioner that, the non granting of the personal hearing, which was conducted by the second officer, as per the request of the petitioner, on the ground that, some orders have to come from the Court of law, would amount to violation of the principles natural of justice, I am not impressed with the said submission, because, so many issues are pending at various law Courts in the Country as these tax legislations are central legislations. Therefore, the mere pendency of any issue before the Court would not preclude the Assessing Authority or the original Adjudicating Authority to proceed in accordance with law, especially under the provisions of the statute under which they are functioning.

9.Unless and until there is a specific order of stay prohibiting or forbearing the authorities concerned from proceeding further in a particular proceedings, generally such kind of request made by the assessee or noticee to defer the hearing to get a decision in the related case pending before any Court of law would not be entertained. Therefore, that kind of request if it is rejected it cannot be termed as 'violation of principles of natural justice'.

10.In that view of the matter, this Court feels that, in this writ petition, without entertaining the same on merits, the petitioner can be relegated to go before the Appellate Authority within a time frame.

11.Hence, this Court is inclined to dispose of this writ petition with the following orders:

> That this writ petition is liable to be dismissed. However, the petitioner is at liberty to file an appeal against the order impugned before the Appellate Authority within two weeks from the date of receipt of a copy of this order. If such an appeal is filed within the said period, the same shall be entertained by the Appellate Authority and be decided on merits and in accordance with law, of course by giving full hearing for both sides by giving the preference of hearing.

12.With these observations and directions, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

Deputy Commissioner of GST & Central Excise,
Ambattur Division,
R-40: A1 100 Feet Road, Mogappair East
Chennai - 600 037.

+1cc to Mr.M.V.Swaroop, Advocate, S.R.No.23481

W.P.No.3577 of 2019

MT(CO)
RGA(28/06/2022)