IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9812 of 2021
and
W.M.P.No.10446 of 2021

[Video Conferencing]

Universal Computer Center
Rep by its Proprietor R.Rajendiran
106A, First Floor, Arani Road,
Kosapet, Vellore - 632 001. ....Petitioner

-Vs.-

The Assistant Commissioner of GST & Central Excise
Central Revenue Building
Officers Line
Vellore - 632 001. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling the entire records pertaining to the Impugned Order in Original No.01/2020 21 - ST dated 17.12.2020 on the file of the Respondent and quash the same.

For Petitioner :Mr.J.V.Niranjan

For Respondent :Mr.Rajendran Raghavan,
Senior Standing Counsel.

ORDER

The petitioner has challenged the impugned Order in Original No.1/2020-2021-ST dated 17.02.2020 vide reference C.No.VI/16/32/2018-STC. It is the specific case of the petitioner that the activity undertaken by the petitioner is exempt from payment of service tax as the activity would be covered under the negative list in Section 66(D)(F) of the Finance Act, 1994 as in force with effect from 01.07.2012.

2.The learned counsel for the petitioner submits that in an identical issue, the Commissioner of GST and Central Excise (Appeals) vide order dated 12.07.2019 in A.No.26/2019-TRY (ST) in the case of M/s.Surya Data Systems Private Ltd., Pudukottai v. The Assistant Commissioner of GST & Central Excise, Thanjavur Division has dropped the proceedings by allowing the appeal filed by the said M/s.Surya Data Systems Private Ltd.,.

3.The learned counsel for the petitioner submits that despite the aforesaid order being cited before the respondent, the respondent has passed the impugned order. It is submitted that as a subordinate officer, the respondent is bound to follow the order of the Appellate Authority and that there is no other order to substantiate that the order passed in the case of M/s.Surya Data Systems Private Ltd., has been stayed or set aside.

4.The learned counsel for the petitioner also drawn the attention to the order of this Court dated 20.04.2021 directing the respondent to verify whether the order of Commissioner (Appeals) in the case of M/s.Surya Data Systems Private Ltd., has been accepted or not.

5.The learned counsel for the petitioner further submits that though the respondent had filed the counter, the respondent has not categorically stated the case one way or the other and therefore, it has to be assumed that the order of the Commissioner (Appeals) in M/s.Surya Data Systems Private Ltd., case has been accepted by the Department.

6.The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of Union of India v. Kamalakshi Finance Corporation reported in 1991 55 ELT 433 and submits that as a subordinate authority, the respondent ought to have followed the order of the Appellate Commissioner. As such, the respondent has no jurisdiction to take a different view from the order passed by the Appellate Authority.

7.Opposing the prayer, the learned Senior Standing Counsel for the respondent submits that the petitioner has an alternate remedy before the Commissioner (Appeals) under the provisions of the Finance Act, 1994 and therefore, the petitioner cannot circumvent the procedure prescribed under the Finance Act, 1994 merely to bypass the mandatory requirement of pre-deposit as is contemplated under the Finance Act, 1994 r/w Central Excise

Act, 1944.

8.Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent.

9.The method and mechanism of disposal of the appeal has been speed tracked from the year 2014 by making it mandatory for an assessee aggrieved by the order of an authority to make a pre-deposit. In the first round of appeal, the appellant is required to pre-deposit 7.5% of the disputed tax/duty and in case of second round of appeal before the Appellate Tribunal, a further of 2.5% is required to be pre-deposited.

10.The very purpose of making these amendments to the Central Excise Act, 1944 as made applicable to the Finance Act, 1994 is to ensure there is a speedy disposal of the appeal. The facts as to whether the petitioner's activity fall within the purview of Section 66(D)(F) or not is a matter to be examined by the Appellate Commissioner. In case, the decision of the Appellate Commissioner in M/s.Surya Data Systems Private Ltd., has not been appealed, it will have persuasive value before the Appellate Commissioner as the Appellate Commissioner will be a person of equal rank who will consider the petitioner's appeal. This matter would require proper determination by the Appellate Commissioner.

11.Under these circumstances, the Writ Petition is disposed of by giving liberty to the petitioner to file an appeal before the Appellate Commissioner within a period of thirty days from the date of receipt of a copy of this order. In case such an appeal is filed within the stipulated time, the Appellate Commissioner shall entertain the appeal on merits and dispose of the same in accordance with law within a period of three months thereafter.

12.The Appellate Commissioner shall also ascertain as to whether the order of the Commissioner (Appeals) in M/s.Surya Data Systems Private Ltd., Pudukottai case referred to supra vide Order in Appeal A.No.26/2019-TRY (ST), dated 12.07.2019 has been accepted by the Department or not.

13.Needless to say, before any order is passed by the respondent, the petitioner shall also be heard in person or through their authorised representative, subject to such Government protocols as may be in place, owing to outbreak of third wave of Pandemic.

14.The Writ Petition stands disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(Digit)

// True Copy //

Sub Assistant Registrar

pgp

To

The Assistant Commissioner
GST & Central Excise
Central Revenue Building
Officer line
Vellore-632 001.

+1cc to Mr.J.V.Niranjan, Advocate SR.No.2796

W.P.No.9812 of 2021

MT(CO)
CB(18/02/2022)