BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)No.3160 of 2022
and
W.M.P.(MD)No.2748 of 2022

T.Suthahar .. Petitioner

Versus

1.The Commissioner,
CGST & Central Excise,
O/o. the Commissioner of GST and Central Excise,
GST Bhavan, Central Revenue Buildings,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai - 625 002.

2.The Joint Commissioner,
CGST & Central Excise,
O/o. the Commissioner of GST and Central Excise,
GST Bhavan, Central Revenue Buildings,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai - 625 002. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Order-in-Original No.MDU/ST/JC/20/2021 in File No.V/ST/15/68/2019 - Adjn, dated 30.11.2021, passed by the second respondent, quash the same and consequently, direct the second respondent to re-do the adjudication proceeding afresh by giving adequate opportunity.

For Petitioner	:	No Appearance
For Respondents	:	Mr.S.Gurumoorthy Senior Panel Counsel

ORDER

There is no representation for the petitioner.

2.In the Writ Petition, the petitioner has challenged the impugned Order-in-Original No.MDU/ST/JC/20/2021 in File No.V/ST/15/68/2019 - Adjn, dated 30.11.2021, passed by the second respondent.

3.The petitioner had earlier suffered an order on 28.02.2021, vide Order-in-Original No.MDU-ST-JC-02-2021. The said order was quashed and set aside and the case was remitted back by this Court, by its order dated 01.04.2021, in W.P.(MD)No.6952 of 2021. Thereafter, the second respondent has passed the impugned *de novo* proceedings by granting partial relief, when the benefit under Notification No.9/2016-Service Tax, dated 01.03.2016, was available.

4.There are several disputed question of facts and it is left open for the petitioner to work out the remedy before the appellate Commissioner and thereafter, before the Tribunal and thereafter, before this Court, in its appellate jurisdiction or before the Hon'ble Supreme Court in the hierarchy/appellate authority prescribed under the Finance Act, 1994 read with the provisions as made applicable to the levy and collection of service tax.

5.The petitioner was required to pre-deposit a sum equivalent to 7.5% of the disputed tax / penalty as pre-deposit of the disputed tax of Rs.44,51,915/-. The Writ Petition has been filed to avoid pre-deposit. Under these circumstances, I am inclined to dismiss the Writ Petition, by giving liberty to the petitioner to work out the appeal remedy before the appellate Commissioner by filing a statutory appeal within a period of 30 days from the date of receipt of a copy of this order.

6.The petitioner is directed to file a statutory appeal within a period of 30 days from the date of receipt of a copy of this order. If such appeal is filed before the appellate authority together with pre-deposit as contemplated under Section 35 of the Central Excise Act, 1944, the appellate Commissioner shall entertain the appeal and dispose of the same on merits and in accordance with law.

7.Since there is no representation on behalf of the petitioner, the respondent is directed to send a copy of this order to the petitioner for the purpose of computation of limitation.

8.This Writ Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Commissioner,
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+1 CC to M/s.S.GURUMOORTHY, Advocate (SR-14112[F] dated 24/03/2022)

+1 CC to M/s.B.ROOBAN, Advocate (SR-14200[F] dated 24/03/2022)

WP (MD) No.3160 of 2022
23.03.2022

VR(CO)
KB(05.04.2022) 3P 5C