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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.12.2023**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P No.35856 of 2023
and WMP Nos.35847 & 35848 of 2023

M/s.M.M.A. Transport Pvt. Ltd.,
Rep.by its Managing Director
Mr.M.Jaffar Ibrahim
No.12/4, 1st Floor,
Indira Colony First Street,
Ashok Nagar, Chennai – 83. ... Petitioner

vs.

1. The Commissioner (Appeals – II)
Office of the Commissioner of GST &
Central Excise (Appeals – II)
12th Main Road, Anna Nagar
Chennai – 40.

2.The Additional Commissioner
Office of the Commissioner of GST & C.Ex.,
Chennai South Commissionerate
692, M.H.U. Complex, Nandanam,
Chennai – 35. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari mandamus calling for the records in pursuant to the 2nd respondent's impugned order dated 17.10.2023 in

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Order-in-Original No.18/2023 ST-ADC and quash the same and consequently direct the Customs, Central Excise and Service Tax Appellate Tribunal, Chennai to dispose of the petitioner's appeal in S.T.40504/2002 CU (DB) within time stipulated by this Court.

For Petitioner : Mr.S.Jeremiah

For Respondents : Mr.K.Mohanamurali
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order dated 17.10.2023 in Order-in-Original No.18/2023 ST-ADC passed by the 2nd respondent's and to quash the same and consequently to direct the Customs, Central Excise and Service Tax Appellate Tribunal, Chennai to dispose of the petitioner's appeal in S.T.40504/2002 CU (DB).

2. The petitioner is engaged in providing goods transport service and has been periodically filing income tax returns. On the request made by their clients, the petitioner booked vehicles for transporting the goods as desired by the transport lorry owners for various places throughout India. Hence, the incentive received by the

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petitioner from the transporters cannot be treated as consideration received for S/T services. While so, the petitioner received a show cause notice dated 28.04.2022 to which the petitioner submitted their explanation on 10.05.2022. After receiving the explanation of the petitioner, the 2nd respondent, by order dated 29.07.2022 intimated the petitioner to appear in person before the Lower Adjudicating Authority (LAA) on 10.08.2022. As per the said order, the power of attorney appointed by the petitioner, appeared before the LAA. Thereafter, the petitioner, through his counsel received a mail from LAA calling for certain documents and before submitting the same, the petitioner received adjudication order dated 22.08.2022.

3. Aggrieved against the said order, the petitioner filed an appeal before the 1st respondent and the same was allowed remanding the matter back to the assessing officer to ascertain the tax turnover, eligibility for exemption, eligibility for RCM etc. with a direction to conclude the proceedings within four weeks from the date of receipt of the order. Against the said order, the petitioner filed appeal in O.A.No.221/2023 and the same was allowed on 06.06.2023. Against which the petitioner filed appeal before the Customs, Central Excise and

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Service Tax Appellate Tribunal. While the said appeal was pending, the impugned order came to be passed by the 2nd respondent.

4. The learned counsel appearing for the petitioner submitted that originally, challenging the assessment order passed by the First Appellate Authority, i.e. The Lower Appellate Authority passed an order on 06.06.2023 remanding the matter to the assessing officer. Against the said order, on 31.07.2023, the petitioner filed the appeal before the CESTAT. The said appeal is pending and no stay has been granted in the said appeal. The learned counsel would further submit that pendency of the appeal before CESTAT has also been brought to the notice of the assessing officer. Despite the same, the Assessing Officer, without taking into consideration of the same, has passed the impugned assessment order dated 17.10.2023. Hence, the present writ petition.

5. On the other hand, the learned Senior Standing Counsel appearing for the respondent would submit that no stay has been granted by the Appellate Authority in the appeal preferred by the petitioner. Under such circumstances only, the impugned assessment order has been passed and there is no infirmity in the said order passed by the 2nd

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respondent.

6. Heard the learned counsel appearing for the petitioner as well as the learned Senior Standing Counsel appearing for the respondents and perused the materials on record.

7. Upon consideration of the submissions made by the learned counsel appearing for the petitioner as well as learned Senior Standing Counsel appearing for the respondents and on perusing the documents, it appears that the original assessment order has been challenged before the Lower Appellate Authority (LAA) and the said LAA has passed the order on 06.06.2023 remanding the matter back to the assessing officer and the assessing officer thereafter passed the impugned order dated 17.10.2023. In the meantime, the petitioner filed appeal before the CESTAT however no interim order has been passed. Since no interim order has been obtained by the petitioner, the assessing officer proceeded to pass the impugned order. In view of the above, I do not find any illegality or irregularity in the order passed by the Assessing Officer, taking into consideration the decision making process on his part in passing the impugned order. If at all, the petitioner is aggrieved by such order, they

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can approach the Lower Appellate Authority seeking appropriate relief and this Court is not the proper forum to pass any orders, when the appeal is pending before the CESTAT and hence this Court is not inclined to entertain this writ petition.

8. Accordingly, this writ petition is dismissed granting liberty to the petitioner to approach the Appellate Authority for the relief, if they so desire. At this juncture, the learned counsel appearing for the petitioner seeks direction by this court to fix the time limit for disposing of the appeal.

9. Taking into consideration the submission made by the learned counsel for the petitioner, the Appellate Authority is directed to dispose off the appeal, in accordance with law, within a period of three

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months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.12.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

To

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KRISHNAN RAMASAMY, J.

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