IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.23085 of 2022
and
W.M.P.No.22093 of 2022

M/s.Blessings Cargo Care Pvt.Ltd.,
Rep.by its Managing Director,
Shri.R.Ravichandran,
26/33, Venugopalapuram Main Street,
Venugopalapuram, Nanganallur,
Chennai-600 061.

presently at
Plot No.31, Door No.21, First Main Road,
Nagappa Nagar, Chrompet, Chennai-600 044. ... Petitioner

-Vs-

The Assistant Commissioner of CGST & Central Excise,
Alandur Division, Chennai South Commissionerate,
690, E.V.R.Periyar Building, Anna Salai,
Nandanam, Chennai-600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari and call for the records pertaining to the impugned order in original dated 30.06.2022 passed by the respondent in C.No.IV/16/69/2017-Adj, and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.V.Sundareswaran, Sr.Standing Counsel

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ORDER

The petitioner assails an order-in-original dated 30.06.2022. The challenge to the said order is not on merits, but on the limited grounds that the Customs Excise and Service Tax Appellate Tribunal, Chennai, (CESTAT), by an order dated 18.11.2019, disposed of the stay application of the petitioner on the basis of an undertaking given by the authorized representative of the respondent not to proceed with the re-adjudication until disposal of the appeal.

2. A statement of demand was issued on 11.12.2017 with regard to the petitioner's liability to pay service tax in respect of alleged reimbursement of expenses. By an order-in-original dated 09.11.2018, the proceedings were dropped. The matter was carried in appeal by the respondent before the Commissioner (Appeals-II). By an order dated 27.06.2019, the appeal was disposed of by remanding the matter to the original authority for reconsideration. Against the order of the appellate authority, the petitioner filed an appeal before CESTAT and CESTAT disposed of the stay application by the order referred to above. The appeal remains pending on the file of the CESTAT.

3. Learned counsel for the petitioner invited my attention to the impugned order and pointed out that the order was issued entirely on the strength of the judgment of the Hon'ble Supreme Court in *M/s.Asian Resurfacing of Road Agency Pvt.Ltd & Another -v- Central Bureau of Investigation (Asian Resurfacing) [(2018) 16 SCC 299]*. By referring to a circular issued by the Central Board of Indirect Taxes and Customs on 18.11.2019, learned counsel clarified that the above mentioned judgment of the Hon'ble Supreme Court only applies to proceedings before trial courts. In spite of such clarification and the contention of the petitioner that the adjudication proceedings should not be proceeded with until the appeal is disposed of, learned counsel pointed out that the original authority proceeded with the assessment.

4. In response to these submissions, Mr.V.Sundarareswaran, learned Senior Standing Counsel, submits that the CESTAT did not grant a stay of proceedings before the original authority. Instead, CESTAT recorded the undertaking of the authorized representative and disposed of the stay application. In the absence of an order of interim stay, learned counsel contends that the original authority was entitled to proceed with the adjudication.

5. In view of the rival contentions, the order of CESTAT warrants close examination. The operative portion thereof is as under:

> *"4. The appeal has been filed against the direction of remand made by the Commissioner (Appeals). Needless to say if fresh adjudication is proceeded during the pendency of the appeal, the remedy availed by the appellant would serve no purpose. The learned Authorized Representative undertakes to inform the respective Commissionerate not to proceed with readjudication, until the appeal before the Tribunal is disposed. Considering the said undertaking, the stay application is disposed off accordingly."*

From the above extract, it is clear that the stay application was disposed of on the basis of an undertaking provided by the authorized representative. As contended by Mr.Sundareswaran, this is not a stay order. Nonetheless, by this order, the stay application was disposed of and, therefore, the petitioner had no further opportunity to request for a stay. In case the respondent was of the view that revenue interest has been adversely affected by the assessment not being proceeded with on account of the undertaking, the appropriate course of action would have been to move an appropriate application or mention the matter before the CESTAT, so as to vary the above mentioned order.

6. In addition, it should be noticed that the impugned order does not proceed on the basis that CESTAT merely recorded the undertaking. The impugned order relies on the judgment of the Hon'ble Supreme Court in *Asian Resurfacing* so as to proceed with adjudication notwithstanding the pending appeal before the CESTAT. This was clearly not the appropriate course of action especially in view of the clarification provided by the

Central Board of Indirect Taxes and Customs.

7. The order impugned also records that the petitioner did not furnish the documents sought for in the personal hearing notice and only relied on the order of CESTAT. In effect, the impugned order was issued without taking into consideration the submissions and documents relied on by the petitioner.

8. For all these reasons, the impugned order calls for interference. At the same time, it should be recognized that the order of CESTAT was issued on 18.11.2019 and more than four years have lapsed since then. In order to balance the interest of both parties, this Writ Petition is disposed of with the following directions:

(1) The impugned order dated 30.06.2022 is quashed and the matter is remanded for reconsideration.

(2) The petitioner is directed to move an application for early hearing before the Customs Excise and Service Tax Appellate Tribunal. Such application shall be moved within two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the Customs Excise and Service Tax

Appellate Tribunal is requested to dispose of the application and appeal as expeditiously as the business of the Tribunal permits.

(3) Upon disposal of such appeal, the respondent is directed to proceed with the adjudication and dispose of the same by a reasoned order after providing a reasonable opportunity to the petitioner. There will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

18.01.2024

rpl
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Assistant Commissioner of CGST & Central Excise,
Alandur Division, Chennai South Commissionerate,
690, E.V.R.Periyar Building, Anna Salai,
Nandanam, Chennai-600 035.

SENTHILKUMAR RAMAMOORTHY,J.

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