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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15346 of 2021
and
W.M.P.(MD) No.12250 of 2021

S.Chidambara Karthikeyan ... Petitioner

Vs.

The Joint Commissioner,
O/o. the Joint Commissioner of CGST and Central Excise,
GST Bhavan, Tractor Road, NGO 'A' Colony,
Tirunelveli – 627 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of Order in Original No. 09/JC/ST/2021 (DE NOVO) dated 12.07.2021 and quash the same.

For petitioner : Mr.S.Venkatachalam

For respondent : Mr.N.Dilip Kumar
Standing Counsel

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ORDER

Heard learned counsel for the petitioner and the learned Standing Counsel for the respondent.

2. The petitioner is aggrieved by the impugned Order-in-Original No. 09/JC/ST/2021 (DE-NOVO) dated 12.07.2021 passed by the respondent in his proceedings bearing reference in C.No.V/ST/15/24/18-Adjn.

3. The impugned order has been passed pursuant to the order of the Commissioner (Appeals) vide Order-in-Appeal No.41 & 42/2020 dated 23.03.2020. By the aforesaid order, the Commissioner (Appeals) had dismissed the petitioner's appeal against the Order-in-Original No.30/JC/ST/2018 dated 25.10.2018 in his proceedings bearing reference in C.No.V/ST/15/24/18-Adjn.

4. As far as the Department's Appeal is concerned, the case was remitted back to the respondent to pass fresh orders with the following observations:

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17. The department have also claimed that though the non-production of documents/information before the officer has been cited as basic reason for proposing imposition of penalty under Section 77 dropping the demand of penalty under Section 77 is not correct. This ground is also a valid ground as the case has emanated due to not providing the relevant documents before the Audit officers which has resulted in the objection being raised; later Show Cause Notice raised and impugned order passed confirming the Service Tax demand on the differential amount. The fact that the assesse has not produced the relevant documents in spite of letter issued and even after summons was issued the Show Cause Notice has proposed imposition of penalty under Section 77 of Finance Act, 1994, whereas the LAA has brushed aside imposition of penalty under Section 77 as there is no specific violation which is not acceptable. Therefore, the LAA on remand shall also examine the penal provisions under Section 77(1)(c) of Finance Act, 1994 for not furnishing records/documents called for before the departmental officer and impose penalty under Section 77(1)(C) ibid.

18. Accordingly, I pass order as shown below:-

ORDER

1. The appeal bearing A.No. 265/2018-ST filed by the assessee is rejected ;
2. The departmental appeal bearing A.No. 03/2019-ST(D) is allowed by way of remand and the O.I.O. 30/JC/ST/2018 dated 25.10.2018 is set aside with direction to LAA to carry out verification of the work orders/invoices etc. re-quantify the Service Tax demand and to impose appropriate penalty under Section 77(1)(c) of Finance Act, 1994 as discussed above in paras 14 to 17.

5. Under these circumstances, the petitioner has preferred an another Appeal before the Customs, Excise and Service Tax Appellate Tribunal in Appeal No.ST/40415/2020, which is pending for further adjudication.

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6. The basis of the remand order has been challenged by the petitioner before the Tribunal. Therefore, there is no justification in passing the impugned order, merely because, the Tribunal has not granted any stay of the composite order passed by the Commissioner (Appeals) vide order in Appeal No.41 & 42/2020 dated 23.03.2020 in A.No.265/2018-ST & 03/2019-ST(D). It is open for the respondent to expedite the proceedings, in case the pendency of the proceedings is impediment to recover the amount from the petitioner.

This Writ Petition stands allowed with above observations. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

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C.SARAVANAN, J.

apd

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