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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.17408 of 2024
and
W.M.P.(MD) No.14945 of 2024

Tvl.Fe. Nerve Building,
rep. by Proprietor
M.Balamurugan ... Petitioner

/vs./

1.The Assistant Commissioner,
Office of the Assistant Commissioner of GST
& Central Excise,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur 613 001.

2.The Commissioner of Customs and Central Excise (Appeals),
Office of the Commissioner of Customs and
Central Excise, No.1,
Williams Road,
Cantonment,
Tiruchirapalli 620 001
(R2has been suo motu impleaded
vide order dated 26.07.2024)
... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records on the file of the respondent pertaining to the Impugned assessment order in DIN.20221259XN030000B32E dated 30.12.2022 - File No.GEXCOM/ADJN/ST/1971/2022-CGST-DIV-TNJ and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja.Karthikeyan

For Respondents : Mr.R.Janda Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned Order in Original No.154/2022-ST dated 30.12.2022. By the impugned order, the first respondent has confirmed the demand proposed in the show cause notice No.139/2021-ST dated 18.10.2021. Operative portion of the impugned order reads as under:

ORDER

i. I determine and confirm the demand of Rs. 3,01,574/- (Rupees Three Lakhs One Thousand and Five Hundred and Seventy Four only) (inclusive of Service Tax and Cesses thereof) from M/s. FE Nerve Building (M/s M. Balamurugan), Thanjavur, for the period 2016-17 under proviso to Section 73(2) of the Finance Act, 1994.

ii. I order that M/s. FE Nerve Building (M/s M. Balamurugan), Thanjavur, shall pay appropriate interest at applicable rates under Section 75 of the Finance Act, 1994 on the amount demanded at (i) above,

iii. I impose a penalty of Rs. 3,01,574/- (Rupees Three Lakhs One Thousand and Five Hundred and Seventy Four only) (inclusive of

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Service Tax and Cesses thereof) from M/s. FE Nerve Building (M/s M. Balamurugan), Thanjavur under Section 78(1) of the Finance act, 1994. The assessee is hereby informed that if the Service Tax demanded at (i) above & interest demanded at (ii) above are paid within a period of thirty days of the receipt of this order, the penalty payable shall be twenty-five percent of the amount determined in Sl.No.(i) above in terms of second and third proviso to Section 78 of the Finance Act, 1994. The benefit of such reduced penalty shall be available only if the amount of reduced penalty is also paid within thirty days of the receipt of this order."

v. I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand only) on M/s. FE Nerve Building (M/s M. Balamurugan), Thanjavur, under Section 77(1)(b) of the Finance Act, 1994 for non-maintenance of proper records.

2.It is the specific case of the petitioner that the petitioner has replied to the same and had also appeared for a personal hearing. Despite the same, the first respondent has confirmed the demand. It is the further case of the petitioner that the impugned Order in Original No.154/2022-ST dated 30.12.2022 was received by the petitioner during the period when the country was still under lockdown due to the affliction on account of COVID-19.

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3.It is submitted that the petitioner's Incharge, namely Ramachandran had received the papers and had not reported the receipt of the impugned order and therefore, the petitioner was unaware of the impugned order that came to be served on some time during the beginning of January, 2023. It is submitted that only after the petitioner was sent a reminder on 24.06.2024 asking the petitioner to pay the amount confirmed vide impugned order, the petitioner has approached this Court.

4.On the other hand, the learned Senior Standing Counsel for the respondent would submit that the writ petition is liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440***.

5.It is submitted that even the appeal at this stage will be time barred in terms of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

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6.In my view, the explanation given by the petitioner appears to be reasonable, as no assessee will remain mute if an adverse order is passed. Either it would file an appeal for the Appellate Commissioner or would have escalated the issue before this Court, if any of the grounds were available for quashing the same under Article 226 of the Constitution of India or would have complied with the order, if the assessee accepted the same.

7.In this case, the petitioner has remained mute all along. The explanation for the same offered by petitioner is reasonable and is therefore accepted. Since the order is a detailed order, I do not wish to interfere with the same. However, liberty is given to the petitioner to file a statutory appeal before the Commissioner of Customs and Central Excise (Appeals), Office of the Commissioner of Customs and Central Excise, No.1, Williams Road, Cantonment, Tiruchirapalli 620 001.

8.Under these circumstances, the Commissioner of Customs and Central Excise (Appeals), Office of the Commissioner of Customs and Central Excise,

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No.1, Williams Road, Cantonment, Tiruchirapalli 620 001 is *suo motu* impleaded as second respondent in this writ petition.

9.The second respondent/the Commissioner shall entertain the appeal and dispose of the same on merits and in accordance with law without reference to the limitation. The petitioner shall file an appeal within a period of 30 days from the date of receipt of a copy of this order and comply the mandatory pre-deposit as is contemplated under Section 35F of the Central Excise Act, 1944 as made applicable to the appeals under the provisions of the Finance Act, 1994.

10.With such liberty, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

26.07.2024

Index : Yes / No
Internet : Yes / No
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<u>C.SARAVANAN, J.</u>

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