IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.18269 & 18274 of 2022
and W.M.P.Nos.17616, 17617, 17621 & 17622 of 2022

A.P.Enterprises
Represented by its Manager and Authorised Signatory
Mr.V.Srinivasan,
10, Gopalapuram Street,
T.Nagar, Chennai – 600 017.

...Petitioner in both W.Ps

Versus

Commissioner of Central Excise, Chennai – II,
Chennai South Commissionerate,
No.692, MHU Complex, 5th Floor,
Anna Salai, Nandanam,
Chennai.

...Respondent in both W.Ps

Prayer in W.P.No.18269 of 2022:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in relation to the Order-in-Original No.35/2019 (C) dated 31.12.2019 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

Prayer in W.P.No.18274 of 2022:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in relation to the Order-in-Original No.34/2019 (C) dated 31.12.2019 on the file of the respondent and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violative of Articles 14 and 19(1)(g) of the Constitution.

For Petitioner in both W.Ps	:	Mr.M.N.Bharathi, for Mr.S.Muthu Venkataraman
For Respondent in both W.Ps	:	Mr.Sai Srijan Tayi, Senior Panel Counsel

COMMON ORDER

In these writ petitions, the Petitioner has challenged the Order-in-Original Nos.35/2019 (C) & 34/2019 (C) dated 31.12.2019 (hereinafter referred to as "Impugned Order") passed by the Respondent.

2. By the Impugned Order, the Respondent has confirmed the proposals contained in Show Cause Notice No.03/2008 dated 29.01.2008 and Show Cause Notice No.346/2008 dated 23.10.2008 issued to the Petitioner. Operative portion of the Impugned Order dated 31.12.2019 reads as under:

"24(A) SCN No.03/2008 dated 29.01.2008: OIO No.27/2008 dated 17.04.2008

(i) I demand the Service Tax amount of Rs.1,45,46,646/- (Rupees One Crore Forty Five Lakhs Forty Six Thousand Six Hundred and Forty Six only) from M/s.A.P.Enterprises under proviso to Section 73(1) of the Finance Act, 1994;
(ii) I demand the Service Tax amount of Rs.1,82,003/- (Rupees One Lakh Eighty Two Thousand and Three only) towards the cost of Bentonite Powder used by them under proviso to Section 73(1) of the Finance Act, 1994;
(iii) I demand the interest amount of Rs.70,339/- under Section 75 of Finance Act, 1994 for the delay in payment of Service Tax; and
(iv) I demand interest from them in terms of Section 75 of the Act on the service tax and education cess demanded at (i) and (ii) above;
(v) I impose a penalty of Rs.100/- (Rupees One hundred only) per day up to 18.04.2006 and Rs.200/- (Rupees Two Hundred only) per day from 18.04.2006 or 2% of the above Service Tax and Education Cess per month whichever is higher starting with the first day after the due date till the date of actual payment of the outstanding amount of Service Tax and Education Cess, under Section 76 of the Finance Act, 1994. This penalty shall not however, exceed the Service Tax and Education Cess demanded in this order;
(vi) I impose a penalty of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) under Section 78 of the Act.

24(B) SCN No.346/2008 dated 23.10.2008; OIO No.15/2010 dated 11.06.2010

(i) I demand Service Tax amount of Rs.1,15,03,317 (Rupees One Crore Fifteen Lakhs Three Thousand Three Hundred Seventeen Only) from M/s.A.P.Enterprises under proviso to Section 73(1) of the Finance Act, 1994 for the period April 2006 to September 2007;
(ii) I demand appropriate interest from them on the above mentioned service tax amount payable at (i) under Section 75 of the Finance Act, 1994;
(iii) I impose a penalty of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakh only) on them under Section 78 of the Finance Act, 1994. The amount of penalty shall however be reduced to 25% of the Service Tax determined, if only the service tax interest determined is paid along with reduced penalty within 30 days from the date of receipt of this order in terms of proviso to Section 78 of the Finance Act, 1994."

3. The learned counsel for the Petitioner submitted that the Impugned

Order passed by the Respondent does not have the Document Identification Number (DIN) which is contrary to the **Circular No.37/2019 – CUS dated 05.11.2019** and **Circular No.43/2019 – CUS dated 23.12.2019** issued by the Central Board of Indirect Taxes & Customs, New Delhi.

3.1. In this connection, the learned counsel for the Petitioner drew the attention of this Court to Paragraph No.5 of the Circular No.37/2019 – CUS dated 05.11.2019 and Paragraph No.4 of the Circular No.43/2019 – CUS dated 23.12.2019, wherein, it has been stated as follows:

Paragraph No.5 of the Circular No.37/2019 – CUS dated 05.11.2019:

> *"5. Any communication issued without an electronically generated DIN in the exigencies mentioned in para 3 above shall be regularized within 15 working days of its issuance, by:*
>
> > *(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;*
> > *(ii) mandatorily electronically generating the DIN after post facto approval; and*
> > *(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file."*

Paragraph No.4 of the Circular No.43/2019 – CUS dated 23.12.2019:

> *"4. The Board once again directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 4 of Circular No.37/2019 dated 05.11.2019 shall be treated as invalid and shall be deemed to have never been issued provided the omission is not regularized as per the procedure stated in para 5 of the said circular."*

3.2. Further, the learned counsel for the Petitioner submitted that the issue involved herein is no longer *res integra* and is squarely covered by the decisions of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai in the following appeals preferred by the Petitioner:

(i) ***M/s. A.P. Enterprises Vs. Commissioner of Service Tax, Chennai -II*** *(2019) 6 TMI 18 (Final Order No.40634 of 2019 dated 25.03.2019 in Service Tax Appeal No.00555 of 2009)*

(ii) ***M/s. A.P. Enterprises Vs. Commissioner of Central Excise & Service Tax, Chennai*** *(2022) 6 TMI 431 (Final Order No.40212 of 2022 dated 09.06.2022 in Service Tax Appeal No.00703 of 2010)*

3.3. The learned counsel for the Petitioner further submitted that pursuant to the aforesaid **Final Order No.40212 of 2022 dated 09.06.2022** passed by the CESTAT, Chennai, subsequently, the Petitioner had filed a refund claim for Rs.28,91,825/-. It is submitted that the Petitioner had produced a challan for Rs.23,91,825/- alone and did not produce any challan for the remaining amount of Rs.5,00,000/-. The Petitioner's case with regard to refund claim was forwarded to the Review and Tribunal Section to ascertain whether the CESTAT Order can be accepted in order to process the refund.

3.4. There, the Reviewing Authority (Commissioner) accepted the **Final Order No.40212 of 2022 dated 09.06.2022** passed by the CESTAT, Chennai while deciding the refund claim of the Petitioner. Consequently, the Joint Commissioner, Thyagaraya Nagar Division, Chennai South Commissionerate vide **Order-In-Original dated 10.01.2023**, refunded Rs.23,91,825/- to the Petitioner. Therefore, the learned counsel for the Petitioner prays that the Impugned Order ought to be quashed similarly in the light of the **Final Order No.40212 of 2022 dated 09.06.2022** passed by the CESTAT, Chennai.

4. On the other hand, the learned Senior Panel Counsel for the Respondent submitted that the Document Identification Number (DIN) was generated for the Impugned Order vide DIN:20191259TL00000GFD34, but, by oversight, the Document Identification Number (DIN) was not mentioned in the Impugned Order and stated that in this regard, a copy has also been annexed with the Counter Affidavit filed in these writ petitions. It is further submitted that as far as the aforesaid two decisions of the CESTAT, Chennai are concerned, the same have to be examined by the

Respondent.

5. Heard the learned counsel on either side and perused the materials available on record.

6. As far as this case is concerned, there is an alternate remedy available to the Petitioner to challenge the Impugned Order by way of filing an appeal before the Customs, Excise and Service Tax Appellate Tribunal under Section 86 of the Finance Act, 1994. However, the Petitioner has filed these writ petitions before this Court on the ground that the Impugned Order suffers from gross violation of the **Circular No.37/2019 – CUS dated 05.11.2019** and **Circular No.43/2019 – CUS dated 23.12.2019** issued by the Central Board of Indirect Taxes & Customs, New Delhi.

7. Considering the above facts and circumstances of the case, this Court is of the *prima facie* view that the issue involved herein is squarely covered by the decisions of CESTAT, Chennai in ***M/s. A.P. Enterprises Vs. Commissioner of Service Tax, Chennai -II*** *(2019) 6 TMI 18* and ***M/s. A.P. Enterprises Vs. Commissioner of Central Excise & Service Tax, Chennai***

(2022) 6 TMI 431 and pursuant to the **Final Order No.40212 of 2022 dated 09.06.2022** passed by the CESTAT, Chennai in ***M/s. A.P. Enterprises Vs. Commissioner of Central Excise & Service Tax, Chennai*** *(2022) 6 TMI 431*, refund has also been ordered vide **Order-In-Original dated 10.01.2023** to the Petitioner.

8. In view thereof, the Impugned Order-in-Original Nos.35/2019 (C) & 34/2019 (C) dated 31.12.2019 passed by the Respondent is quashed and the case is remanded back to the Respondent for fresh consideration. The Respondent is directed to examine the aforesaid two decisions of CESTAT, Chennai and pass fresh orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

9. These Writ Petitions are disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.01.2025

mrr
Index : Yes/No
Speaking Order (or) Non-Speaking Order

To

The Commissioner of Central Excise, Chennai – II,
Chennai South Commissionerate,
No.692, MHU Complex, 5th Floor,
Anna Salai, Nandanam,
Chennai.

C.SARAVANAN, J.

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