BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.15262 of 2025
and
W.M.P(MD)Nos.11535 and 11536 of 2025

M/s.Ambaa and Co.,
Represented by its Proprietress,
S.B.Arifa,
299A/1, Seethkathi Street,
Ambaa Nagar, Sammanthapuram,
Rajapalayam 626117. ... Petitioner

Vs.

1.The Commissioner (Appeals),
Office of the Commissioner of GST
and Central Excise (Appeals) Coimbatore,
Circuit Bench at Madurai,
No.4 Lal Bahadur Sasthiri Road, GSt Bhawan,
Bibikulam, Madurai – 625002.

2.The Assistant Commissioner of
Central Excise and Service Tax,
1/15, Shenbaga Thoppu Road,
Rajapalayam 626117. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first Respondent in order in Appeal No.16/2025-

MDU-ST-APP, dated 19.02.2025 and to quash the both as cryptic, non-speaking, illegal, arbitrary, wholly without jurisdiction and direct the first respondent to take up the appeal filed in A.No 126/2023-ST(Madurai) and pass order afresh on merits and in accordance with law.

For Petitioner : Mr.N.Sudalai Muthu

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner has filed this writ petition against the impugned order, dated 19.02.2025 and direct the first respondent to take up the appeal filed in A.No.126/2023-ST (Madurai).

2. This is the third round of litigation. Earlier, the petitioner and her husband filed writ petitions in W.P(MD)Nos.16757 and 16758 of 2018, which were dismissed by an order, dated 22.03.2021 with the following directions:

> *"These writ petitions are dismissed with liberty to the petitioner to avail the alternative remedy of appeal. The petitioners are given six weeks time from the date of receipt of copy of this order to file the statutory appeal. If within the aforesaid period, the appeals are filed, the appellate authority shall entertain the same without reference to limitation, of course, subject to the fulfilling of the other formalities, such as pre-deposit etc.,"*

3. Thereafter, the petitioner and her husband again filed writ petitions in W.P(MD)Nos.7191 and 7192 of 2023, which came to be disposed of by an order, dated 05.04.2023 with the following directions:

> *"These writ petitions are disposed of granting a further period of six weeks for the petitioners to file the appeals as per the terms in the earlier order in W.P.(MD) Nos.16757 and 16758 of 2018. Is is also made clear that in the event of the petitioner not filing the appeals within the stipulated time, it is open to the respondent to initiate recovery proceedings."*

4. The petitioner was required to deposit 7.5% of the disputed amount tax, as a condition for admitting the appeal, in terms of Section 35F of the Central Excise Act, 1944 as made applicable to the appeal under Section 83 of the Finance Act, 1994. It appears that the petitioner has deposited a sum of Rs.1,04,059/- on 19.02.2024. Thus, there was a deficit of Rs.1,00,00/-. However, it is admitted that on 15.05.2025, the petitioner deposited a further sum of Rs.1,00,000/-. Therefore, the petitioner has now complied with the mandatory requirement under Section 35F of the Central Excise Act, 1944, as made applicable to appeals under Section 83 of the Finance Act, 1994.

5. Considering the same, this writ petition is disposed of by quashing the impugned order and the case is remitted back to the first respondent. Accordingly, appeal No.126/2023-ST (Madurai) against order in Original

No.10/ST/Ac/2017, dated 25.03.2017 is restored on the file of the first respondent. The first respondent shall dispose of the same on merits and in accordance with law as expeditiously as possible. It is needless to stated that before passing final order, the petitioner shall be heard. The amount, which has been paid on 19.02.2024 shall be treated as amount deposited by the petitioner towards pre-deposit. No costs. Consequently, the connected miscellaneous petitions are closed.

09.06.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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2.The Assistant Commissioner of
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C.SARAVANAN, J.

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