BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	23.07.2024
Pronounced on	01.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.5447 and 5501 of 2018
and
W.M.P.(MD)Nos.5381 and 5431 of 2018

Annai Poly Packs
Represented by its Sole Proprietor
M.Ahmed Ibrahim ... Petitioner
in W.P.(MD)No.5447 of 2018

Banu Poly Packs
Represented by its Sole Proprietor
Fathima Banu ... Petitioner
in W.P.(MD)No.5501 of 2018

Vs.

1.The Deputy Director,
Directorate General of Central Excise Intelligence,
Regional Unit,
No.4, Sri Lakshmi Complex,
P&T Nagar Road,
Madurai – 625 014.

2.The Assistant Commissioner of Central Excise,
Virudhunagar Division,
No.130/8-1, Katchery Road,
Virudhugar – 626 001.

3.The Principal Additional Director General,
Directorate of Central Excise Intelligence Unit,
No.4, Sri Lakshmi Complex,
P&T Nagar, Madurai – 625 014.

4.The Director General of Central Excise Intelligence,
Chennai Zonal Unit,
C-3, C-Wing, II Floor,
Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.

5.The Commissioner of CGST & Central Excise,
Madurai. ... Respondents in both W.Ps

Prayer in both W.Ps: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records of the case from the file of the respondents herein, quash the impugned order-in-original in MDU-CEX-COM-07&08/2017 dated 22.12.2017 (served on 06.01.2018*) passed by the fifth respondent.

In W.P.(MD)No.5447 of 2018:

For Petitioner	:	Mr.R.Venkataraman Senior Counsel for Mr.M.Jegadeesan
For Respondents	:	Mr.R.Nandhakumar Senior Standing Counsel

In W.P.(MD)No.5501 of 2018:

For Petitioner	:	Mr.R.Venkataraman Senior Counsel for Mr.M.Jegadeesan
For Respondents	:	Mr.N.Dilip Kumar Senior Standing Counsel

COMMON ORDER

By this common order, both these Writ Petition are being disposed of.

2. In these Writ Petitions, the petitioners have challenged the impugned Order-in-Original No.MDU-CEX-COM-07 & Order-in-Original No.MDU-CEX-COM-08 dated 22.12.2017 passed by the fifth respondent Commissioner of CGST & Central Excise.

3. By the impugned orders, the fifth respondent has confirmed the demand proposed in Show Cause Notice No.01/2016-CE dated 01.01.2016 and Show Cause Notice No.33/2017-CE dated 04.04.2017. Operative portion of the impugned orders dated 22.12.2017 reads as under:-

ORDER

> (i) I treat both the firms M/s Annai Poly Packs, registered in the name of Shri. M.Ahamed Ibrahim, and M/s.Banu Poly Packs registered in the name of Smt.Fatima Banu, wife of Shri.M.Ahamed Ibrahim as single manufacturer for the purpose of commuting the Central Excise duty as the proprietor of M/s Annain Poly Packs, who has all control over of both firms and manufacturing and a clearing PP/HM Sheets and Bags from the said two factories in terms of Section 2(f) of Central Excise Act 1944 (which defines "manufacturer") read with condition nos. 2(v) and 2(vii) of the SSI Exemption Notification No. 8/2003-CE dated 01-3-2003 as amended.

(ii) I confirm the clubbing of the value of clearances of PP/HM Sheets and Bags that have been manufactured by both M/s Annai Poly Packs and M/s Banua Poly Packs for the period from January 2012 to June 2014 and from July, 2015 to May 2016, whose past records appeared to have been destroyed, now determined to the extent of their power consumption using per-unit-average-production calculated from their private records and in terms of condition nos. 2(v) and 2(vii) of SSI Exemption Notification No.8/2003-CE dated 01.3.2003, as amended, for the reasons set out above to determine the aggregate value of clearances for demanding duty from Shri M.Ahamed Ibrahim, the proprietor of M/s.Annai Poly Packs.

(iii) I confirm confiscation of 9852.51 kgs of Poly Bags, valued at Rs. 12,80,826, under Rule 25 of the Central Excise Rules, 2002, kept ready for clearance without payment of duty which were seized from M/s. Annai Poly Packs and subsequently released provisionally.

(iv) I confirm confiscation of 5968.70 kgs of Poly Bags and HM Bags. valued at Rs.6,24,346/-, under rule 25 of the Central Excise Rules, 2002, kept ready for clearance without payment of duty which were seized from M/s. Banu Poly Packs intent to clear along with bags manufactured at App without bills.

(v) I impose a redemption fine of **Rs.1,28,083/- (Rupees One lakh twenty eight thousand and eighty three only)** in lieu of confiscation under Rule 30 of the Central Excise Rules, 2002 on Shri.M.Ahamed Ibrahim, proprietor of M/s.Annai Poly packs as the seized goods have already been provisionally released.

(vi) I impose a redemption fine of **Rs.62,435/- (Rupees Sixty two thousand four hundred and thirty five only)** in lieu of confiscation under Rule 30 of he

Central Excise Rule, 2002 on Smt.A.Fathima Banu. proprietor of M/s.Banu Poly packs as the seized goods have already been handed over under Form of undertaking.

(vii) I confirm an amount of Rs.**2,61,31,886/- (Rupees Two Crore Sixty One Lakh Thirty One Thousand Eight hundred and Eighty Six only)** (Rs. 2,56,82,732/- Central Excise duty, Rs.2,99,436/- Educational Cess and Rs.1,49,718/- S&H Education Cess) payable on the total value of (i) the despatches of PP/HM Sheets and Bags found recorded in their Despatch Registers which were cleared without payment of Excise Duty and (ii) PP/HM Sheets and Bags manufactured to the extent of the power consumption by Annai Poly Packs and Banu Poly Packs and subsequently cleared without payment of Excise Duty, during the period from January 2012 to May 2016, under sub Section 4 of section 11A of Central Excise Act, 1944.

(viii) I appropriate Rs.3,20,207/- Bank Guarantee amount of M/s.Annai Poly Packs which is 25% on execution of B-11 Bond for Rs.12,08,826/- the value of seized Poly bags in quantity of 9852.51 kgs. executed at the time of provisional release of said seized goods.

(ix) I impose a penalty of **Rs.2,61,31,886/- (Rupees Two Crore Sixty One Lakh Thirty One Thousand Eight hundred and Eighty Six only)** on Shri.Ahamed Ibrahim under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of Central Excise Rules 2002 for the suppression of the facts with an intent to evade payment of duty, as discussed supra in detail.

(x) I impose a penalty of Rs.5,000/- (Rupees Five thousand only) on Shri.Ahamed Ibrahim under Rule 27 of the Central Excise Rules 2002, for the breach of Rule 9, in as much as he has not registered his firms APP and BPP even after the actual aggregate value of clearance of PP/HM Sheets and Bags manufactured in APP and BPP exceeded the exemption limit of Rs.1.5 Crores provided under SSI Exemption Notification No.8/2003 dated 1-3-2003 as amended.

(xi) I impose penalty of Rs.5,000/- (Rupees five thousand only) on Shri. Ahamed Ibrahim under Rule 27 of the Central Excise Rules 2002, for the breach of Rule 10 in as much as he has not maintained proper records showing the production, clearance of PP/HM Sheets and Bags and the transaction of value thereon.

(xii) I impose a penalty of Rs.5,000/- (Rupees five thousand only) on Shri. Ahamed Ibrahim under Rule 27 of the Central Excise Rules 2002, for the breach of Rule 12 of CER 2002 in as much he has failed to file the monthly/quarterly returns showing the actual production, clearances and the correct transaction value goods cleared from his factories on or before the date stipulated thereunder.

(xiii) I demand interest at applicable rate on the duty evaded should not be demanded under section 11AA/11AB of Central Excise Act under sub section(15) to Sec. 11A of Central Excise Act, 1944;

(xiv) I impose a penalty of Rs.5,00,000/- (Rupees Five lakh only) on Smt.Fatima Banu under Rule 26 of Central Excise Rules 2002, for having tendered her name and other activities for starting a firm in the name of M/s Banu Poly Packs by Shri. M.Ahamed Ibrahim, the proprietor of M/s. Annai Poly Packs and abet him in his illicit activities such as manufacture of PP/HM Sheets and Bags in the name of her proprietary firm M/s Banu Poly Packs and transferring them to M/s. Annai Poly Packs and vice versa without valid documents and cleared them without payment of excise duty payable thereon and without valid invoice prescribed under excise law and has thus helped him.

4. The specific case of the respective petitioners is that despite repeated requests for cross-examination of the following 7 persons, the petitioners were not allowed to cross-examine these persons:-

(1) Mr.P.V.Prabu, Director of M/s.Seven Seas Polymers (P) Ltd.,
(2) Mr.Shasi Kumar Fomra, Director of M/s.Sigma Mat (P) Ltd.,
(3) Mr.J.T.Shreelal, Proprietor of M/s.Thangam Traders, Kottiyam,
(4) Mr.M.Shaju, Proprietor of M/s.Bismillah Store, Kottarakara,
(5) Mr.P.Mohammed Nasir, Proprietor of M/s.Almas Traders, Trivandrum,
(6) Mr.S.Nadarajan, Proprietor of M/s.S.N.Packs and Bags, and
(7) Mrs.Jothi working in Annai Poly Packs

5. It is submitted that the request was made at the earliest point of time along with reply to the Show Cause Notice No.33/2017-CE dated 04.04.2017. The similar request was once again made by the petitioners during the personal hearing on 25.10.2017.

6. It is submitted that the impugned orders are nullity in view of the decision of the Hon'ble Supreme Court in **Andaman Timber Industries** Vs. **Commissioner of Central Excise, Kolkatta-II**, (2016) 15 SCC 785. A reference is made to paragraph 6 from the said Judgment which reads as under:-

> "***6.*** *According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*"

7. It is submitted that failure to follow the above decision also amounts to violation of law laid down by the Hon'ble Supreme Court under Section 141 of the Constitution of India. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Kamalakshi Finance Corporation**, 1991(55) ELT 433 SC.

8. The learned Senior Standing Counsels for the respective respondents, on the other hand, would submit that the statements were recorded from Mr.M.Ahmed Ibrahim, the proprietor of Annai Poly Packs and his wife Mrs.Fathima Banu, the proprietrix of Banu Poly Packs and one Mr.A.Gnanasekar, the common Manager of both the petitioners. It is submitted that in the respective impugned orders, there is no direct reliance on the statements of any of the persons whom the respective petitioners wanted to cross-examine, except in paragraph 30.6.3.

9. It is submitted that the statement of one Mr.P.V.Prabhu, one of the Directors of the Madurai Branch of M/s.Seven Seas Polymers Pvt. Ltd., merely corroborative in nature is primarily based on the inculpatory statement of Mr.M.Ahmed Ibrahim, the proprietor of Annai Poly Packs, the petitioner in W.P.(MD)No.5447 of 2018, the statement of proprietrix Mrs.Fathima Banu, W/o.M.Ahmed Ibrahim, the petitioner in W.P.(MD)No.5501 of 2018.

10. It is submitted that the demands have been confirmed based on the documents that were relied upon in the Show Cause Notice No.01/2016-CE dated 01.01.2016 and Show Cause Notice No.33/2017-CE dated 04.04.2017

and furnished to the petitioners. It is submitted that even during the course of hearing, the request of the petitioners for cross-examination was recorded and it was stated that there was no corroborative evidence and therefore, the request of the petitioners for cross-examination could not be accepted and agreed.

11. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Senior Standing Counsels for the respective respondents.

12. The impugned order is common in both Writ Petitions. By the impugned orders, the value-based Exemption Notification No.8/2003-CE dated 01.03.2003 for the period from January 2012 to May 2016 was sought to be denied by clubbing the clearance of both units. Both the units are located in the following address:-

W.P.(MD) No.	***Name***	***Address***
5447/2018	M/s.Annai Poly Packs	No.103/7, Aruppukkottai Road, East of Railway Bridge, Virudhunagar
5501/2018	M/s.Banu Poly Packs	No.3/2A, Kullursanthai Road, Virudhunagar.

13. However, statements of the proprietors of the respective units are inculpatory in nature. The impugned orders predominantly placed reliance on the records retrieved from the respective petitioner's premises. The proprietrix of Banu Poly Packs Mrs.Fathima Banu, the petitioner in W.P.(MD)No.5501 of 2018 in her statement dated 28.12.2015 which has been recorded in paragraph 17.3 of the impugned order, has stated as follows:-

> **<u>Statement of Smt. Fatima Banu:</u>**
>
> 17.3. Smt. M.Fatima Banu, proprietor of BPP and wife of Shri M.Ahamed Ibrahim, proprietor of APP, in her statement dated 28.12.2015, has inter alia stated that
>
> - she had been the proprietor of BPP;
> - she did not know the activities of BPP and she did not involve in day to day activities of her firm;
> - since her husband Shri M.Ahamed Ibrahim have already been running M/s.Annai Poly Packs, engaged in the manufacture of PP Bags for the past seven years, he has also been looking after the day to day activities of BPP also;
> - procurement of raw material, supervising the employees, supervising the manufacturing of PP bags, marketing and selling of PP Bags manufactured at BPP and collection of sales proceeds, were being looked after by her husband Shri M.Ahamed Ibrahim.

14. Similarly, Mr.M.Ahmed Ibrahim, the proprietor of M/s.Annai Poly Packs, the petitioner in W.P.(MD) No.5447 of 2018, in his statement which has been recorded in paragraph 17.2 of the impugned order, has stated as follows:-

> 17.2. A statement was recorded from Shri M.Ahamed Ibrahim, Proprietor of M/s.Annai Poly Packs, under Section 14 of Central Excise Act 1944 on 04.07.2015 i.e. on the day of the above said search operation. Shri M.Ahamed Ibrahim, in the above statement, has inter-alia stated that
>
> - he has been running his firm M/s Annai Poly Packs for the last 7 years;
> - his aforesaid firm is engaged in the manufacture and clearance of PP Bags manufactured out of PP granules;
> - his firm has been using three PP machines (Extruders) in the manufacture of PP bags and out of the three machines, two machines are 35 mm (12 inches) machines and one is 40 mm (15 inches) machine;
> - his firm has also been using one cutting machine, 20 table top sealing machines and one side sealing machine;
> - he has been selling the PP bags manufactured in his firm to customers located at Trichy, Tirunelveli, Madurai, Virudhunagar, Nagercoil, Thiruvananthapuram, Kollam and Kottiyam;
> - the PP bags are despatched through KLS Transport to Trichy, through SRJ Transports to Tirunelveli, through Annai Velankanni to Thiruvananthapuram, through Parasakthi Transport to Nagercoil, through Balaji Transport to Kollam and Kottiyam;
> - his sale proceeds were mostly received in cash;

- cash and cheque were paid for the procurement of PP Granules;
- he has followed the practice of selling half of PP bags without bills and half of PP Bags with bills;
- though he knew the sale of PP bags without bills is an offence as per Central Excise Law, due to stiff competition in the PP Bags market and the unwillingness of the customers to pay such duties he was compelled to adopt the aforesaid practice of selling PP bags without bills;
- he has been paying approximately Rs.1.25 lakhs for Electricity consumption which is being paid once in two months;
- he has been using Virgin quality of PP granules in the manufacture of PP Bags.

15. Mr.A.Gnanasekar, the Supervisor-cum-Manager of both the petitioners in his statement which has been recorded in paragraph 17.4 of the impugned order has stated as follows:-

Statement of Shri A.Gnanasekar, Accountant

17.4. A statement was recorded from Shri A.Gnanasekar, Accountant and In charge of M/s Annai Poly Packs under Section 14 of the Central Excise Act 1944, on 03.12.2015. In his above statement, Shri A. Gnanasekar has inter-alia stated that

- he has been working as In-charge of M/s Annai Poly Packs for past 6 years:
- he has involved in the day to day activities such as manufacture, packing and despatches of PP bags:
- APP has manufactured PP bags in different sizes

using three PP machines;

- he has written the details of PP Bags despatched to the customers in the Despatch Registers bearing Sl. Nos.1-2/14, 1-5/14 to 1-12/14;
- the crossed out entries found in the aforesaid Despatch Registers were related to the details of orders of bags received from the respective customer;
- the said PP bags were mostly manufactured at APP and also included the despatches of PP Bags manufactured at BPP;
- the despatch details of PP bags written in the above said Despatch Registers were mostly despatched without bills;
- most of despatches of PP bags written in the Despatch Registers bearing Sl. Nos.1-2/14, 1-5/14 to 1-12/14 were cleared without bills and his owner Shri M.Ahamed Ibrahim would collect the sale proceeds by cash in person on Thursday of each week;
- the Poly Rolls manufactured at BPP were brought to APP where the same were sealed in required length and cut and despatched to customers from APP;
- the PP bags contained in the despatch details written in the aforesaid Despatch Registers included PP bags manufactured at both APP and BPP;
- APP destroyed similar despatch registers related to the period prior to 2014-15 since the said registers contained details of PP bags despatched without bills;
- the raw materials required for the manufacture of PP bags by APP were procured by his owner Shri M. Ahamed Ibrahim;
- the aforesaid raw materials were mostly procured without bills by his owner;
- he agreed that the bill books bearing sl. Nos. 5-1/5 to 5-5/5 contain bills raised for the despatch of PP bags manufactured at APP;

- the details contained in the aforesaid bills were also written in the above mentioned Despatch Registers;
- since the PP bags manufactured by APP were mostly sold without bills, APP did not preserve the documents containing production details.

16. Thus, the point that arises for consideration in this Writ Petition is whether the decision of the Hon'ble Supreme Court in **Andaman Timber Industries** Vs. **Commissioner of Central Excise, Kolkatta-II**, (2016) 15 SCC 785, content of which has been extracted above, can be applied to the facts of the present case, particularly regarding remitting back the case to the respondents?

17. The decision of the Hon'ble Supreme Court in **Andaman Timber Industries case** (referred to supra), content of which has been extracted above, was distinguished by the Hon'ble Division Bench of this Court in **S.Rajendran** Vs. **The Joint Commissioner of Customs (Preventive) and others** *vide* order dated 30.01.2019 in W.A.(MD)No.1469 of 2018. Relevant paragraphs reads as under:-

> *"30. Therefore, denial of cross-examination of co-accomplice who have allegedly retracted their statements is of no consequence as far as the appellant is concerned.*

31. Further, in a quasi-judicial proceeding, a quasi judicial authority is not governed by strict rules of evidence. Charge/case can be proved based on preponderance of probability and other available evidences and documents.

32. We are of the view that in the peculiar facts of the case, it was for the appellant to produce such co-accomplice and elicit their statements as they are not unknown or strangers to the appellant as they were working under him.

33. An order of a quasi judicial officer is sustainable if the finding arrived therein are based on preponderance of probability and other overall evidences and documents on record. Whether the finding arrived in the impugned order is solely based on the statements of co-accomplices or based on preponderance of probability or not is something which can be examined only before the Appellate Commissioner and not in a writ proceeding.

34. Scope of writ petition and the extent to which courts can interfere under Art. 226 is limited. The appellant should therefore explore options before the Appellate Commissioner and place all legal and factual submissions there. The remedies sought for by the appellant before this Court is available to him before the Appellate Commissioner.

35. We would not like to influence the Appellate Commissioner one way or the other on merits should the appellant choose to opt to question the impugned order of the 1st respondent.

36. The Appellate Commissioner can on proper examination of records can come to a just conclusion. As the jurisdiction to interfere is very limited, we would not like to pass orders on merits particularly in view of the statements which appears to have been given by the appellant before the 2nd respondent during investigation.

37. In view of the above conclusion, we are inclined to dismiss the writ appeal. Appellant is given liberty to file an appeal before the Appellate Commissioner within two months from the date of this order. Accordingly, this writ appeal is dismissed. No costs."

18. Similarly, this Court in **Jet Unipex** Vs. **Commissioner of Customs, Chennai**, 2020 (373) E.L.T.649 (Mad.), summarized the position as follows:-

> *"59. At the same time, if such statements are merely intended for corroboration of independent evidence, the cross-examination need not be allowed.*
>
> *60. Therefore, it is for the 1st respondent to decide whether the statements recorded are to be solely relied for confirming the proposed demand or are relied for mere corroboration of independent evidence gathered during investigation.*
>
> *61. In the case of former, mandatorily such statements would require cross-examination and without cross-examination, confirmation of demand would be contrary to the law settled by the Hon'ble Supreme Court in Andaman Timber Industries Vs CCE referred to supra.*
>
> *62. If reliance is to be placed on any statement of any person as a witness, the 1st respondent is enjoined to issue summons and produce such persons for cross examination, unless of course such person is a co-accomplice of the noticee or an employee of the noticee.*
>
> *63. Therefore, it is for the 1st respondent to issue summons to these two employees of CHA's for being present for cross-examination if the 1st respondent is of the view that reliance has to be placed on the statement of these persons before passing an order in the said show cause proceeding.*
>
> *64. Therefore, 1st respondent may inform the petitioner whether it proposes to confirm the demand solely based on the statements of the persons whose statements have been recorded under Section 108 of the Customs Act, 1962 and if that be so, produce them for cross examination by the petitioner.*
>
> *65. As far as the alleged use of threat while recording statements and subsequent retraction is concerned, there are no records before me. Neither the petitioner nor the respondent have filed copies of statements recorded under section 108 of*

the Customs Act, 1962. The petitioners have also not filed any copy of letter of retraction.

66. Thus, it cannot be said that guidelines of the Hon'ble Supreme Court in D.K Basu Vs the State of MP referred to supra was violated particularly in the light of absence of any material records/documents to substantiate that threat or coercion was exercised on the petitioners when statements were recorded. As there are no documents to substantiate that the statements recorded were retracted by the petitioners, I am unable to accede to the request of the petitioner."

19. In the present case, not only the statement of accountant itself is clear but also of the respective petitioners. In W.P.(MD)No.5447 of 2018, the petitioner's accountant Shri.A.Gnanasekar has admitted that PP bags were mostly manufactured at Annai Poly Packs in W.P.(MD)No.5447 of 2018 and included in the despatches of PP bags manufactured at Banu Poly Packs in W.P.(MD)No.5501 of 2018. He has further admitted that despatch details of PP bags written in the despatch registers were mostly despatched without bills.

20. The necessity for cross-examining the customer of the respective petitioner is not required as in a quasi judicial proceedings before the respondents, the respondents are merely governed only by the principles of preponderance of probability and are not governed by strict rules of evidence. Unless, the statements of the persons who have given statements against the

petitioners are solely relied for confirming the demand, question of cross-examination of any of the persons who have given statements against the petitioners does not arises only where demand is solely based on such statement, the Department has to allow cross-examination or in the alternative eschew such statements.

21. The impugned orders *prima facie* indicate that the respondents have merely relied on the statement of buyers of the respective petitioners. They have merely corroborated the records maintained by the respective petitioners that the buyers have purchased PP bags from the respective petitioners. Therefore, there is no merits in the challenge to the impugned orders on the ground that no cross-examination was allowed in terms of the decision of the Hon'ble Supreme Court in **Andaman Timber Industries case** (referred to supra).

22. However, I do not wish to deny the petitioners an opportunity to file a Statutory Appeal against the respective impugned orders before the Commissioner of Central Excise (Appeals) under Section 35 of the Central Excise Act, 1944.

23. Though several grounds have been raised on the issue relating to clubbing the clearances of the units run by the petitioner in W.P.(MD)No.5447 of 2018 and the petitioner in W.P.(MD)No.5501 of 2018, I do not wish to make any comments on merits as the issue has to be decided on merits by the Appellate Authority.

24. Therefore, these Writ Petitions are dismissed with liberty to the petitioners to challenge the impugned orders in the manner known to law before the jurisdictional Commissioner of Central Excise (Appeals) within a period of thirty days from the date of receipt of a copy of this order.

25. If such appeals are filed before the jurisdictional Commissioner of Central Excise (Appeals), such appeals shall be entertained and disposed on merits and in accordance with law without reference to limitation on their turn.

26. The jurisdictional Commissioner of Central Excise (Appeals) is not expected to act mechanically to confirm the liability to fasten an unjust tax liability on an assessee.

27. Needless to state, the respective petitioners shall pre-deposit the amounts as is required under Section 35F of the Central Excise Act, 1944.

28. Since certain observations have been made in this order while dismissing the writ petitions which may have a bearing on the decision to be made by the Appellate Commissioner, the Appellate Commissioner shall pass orders on merits and in accordance with law without getting influenced by any of the observations made in this order touching upon the merits of the case.

29. These Writ Petitions are therefore dismissed with the above liberty. No costs. Connected Writ Miscellaneous Petitions are closed.

01.10.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order

JEN/arb

To
The Assistant Commissioner of GST-Central
Tax Central Excise,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur – 613 007.

C.SARAVANAN, J.

JEN

Pre-delivery order in
W.P.(MD)Nos.5447 and 5501 of 2018

01.10.2024