(2015) 04 MAD CK 0246

In the Madras High Court

Case No : Writ Petition No. 11114 of 2015 and M.P. No. 1 of 2015

Thirumurugan Enterprises APPELLANT

Vs

The Additional Commissioner of Central Excise RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Citation : (2015) 39 STR 563

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Jayachandran, for the Appellant; K. Mohanamurali, Advocates for the Respondent

Judgement

T. Raja, J.

1. This Writ Petition has been filed by M/s. Thirumurugan Enterprises, challenging the order in original No. 123/2014, dated 20.11.2014 passed by the Additional Commissioner demanding a sum of Rs. 22,60,399/- towards service tax including Education Cess and Higher Education Cess for the year 2008-09 to 2011-12 under section 73(2) of the Finance Act and ordering recovery of appropriate interest on the above said amount under section 75 of the Finance Act and imposing penalty of Rs. 22,60,399/- under section 78 of the Finance Act on the ground that the petitioner, before passing of the impugned order dated 20.11.2014, has moved a petition dated 03.11.2014 admitting the liability of the petitioner to pay entire tax liability alongwith the interest on the premise that the they would be allowed to go before the Settlement Commissioner to settle the matter in accordance with law and hence the impugned order ought not to have been passed.

2. It is further submitted by the learned counsel for the petitioner that when it has been admitted both before the Additional Commissioner of Central Excise that the petitioner was prepared to pay the tax liability along with interest and subsequently a sum of Rs. 75,743/-, Rs. 9869/-, Rs. 13,71,852/- on 1.12.2014,

12.12.2014 and 27.12.2014 respectively were paid by way of cash through State Bank of India. Besides the petitioner has paid Rs. 9,70,000/- on 27.12.2014 towards interest and another sum of Rs. 14,57,464/- towards service tax by selling the ancestral property and jewels of the wife of the deponent. These facts would go to show that the petitioner is not disputing the tax liability, accordingly, it is pleaded that it is a fit case where the respondent ought to have allowed the request made on 03.11.2014 to approach Settlement Commissioner. As he did not do so and passed the impugned order, the petitioner company is constrained to approach this court.

3. Concluding his argument, he further submitted that if the order in question is set aside and the matter is allowed to be settled by the Settlement Commissioner, no prejudice, whatsoever, would cause to anyone.

4. Learned counsel for the respondent submitted that since the petitioner has invited the impugned order, the question of directing them to approach the Settlement Commissioner does not arise and therefore they should be directed to approach the appellate authority.

5. This court is not inclined to accept the contention made by the learned counsel for the respondent, for, it is not in dispute that the petitioner admitting their tax liability, has also paid a sum of Rs. 14,57,464/- towards service tax and Rs. 9,70,000/- towards interest. Therefore the request made by them in their application dated 03.11.2014 to permit them to approach the Settlement Commissioner could have been considered by the respondent. As he did not do so, this court, taking note of the fact that the petitioner had also paid the tax liability alongwith interest as mentioned above, is of the view that this is a fit case to find out whether they should be allowed to settle and redress his grievance before the Settlement Commissioner.

6. Therefore, the impugned order is set aside and the petitioner is given two weeks time to approach this Settlement Commissioner from the date of the receipt of the copy of this order. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

