IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos. 5452, 5453, 5667 to 5669,
5727 and 6396 of 2015

THE COMMISSIONER
RANIPET MUNICIPALITY RAILWAY STATION ROAD
RANIPET-632 401.... PETITIONER in WP No.5452 of 2015

THE COMMISSIONER
KRISHNAGIRI MUNICIPALITY MUNICIPAL
ADMINISTRATION AND WATER SUPPLY DEPARTMENT
KRISHNAGIRI-635 001.... PETITIONER in WP No.5453 of 2015

THE COMMISSIONER
ARAKKONAM MUNICIPALITY
ARAKKONAM-631 001... PETITIONER in WP No.5667 of 2015

THE COMMISSIONER
WALAJAHPET MUNICIPALITY MBT ROAD
WALAJAHPET TALUK WALAJAHPET-632 513
... PETITIONER in WP No.5668 of 2015

THE COMMISSIONER
ARCOT MUNICIPALITY MUNICIPAL ADMINISTATION
AND WATER SUPPLY DEPARTMENT ARCOT-632 503.
... PETITIONER in WP No.5669 of 2015

THE COMMISSIONER
AMBUR MUNICIPALITY MUNICIPAL ADMINISTRATION
AND WATER SUPPLY DEPARTMENT AMBUR.
... PETITIONER in WP No.5727 of 2015

THE COMMISSIONER
GUDIYATHAM MUNICIPALITY
GUDIYATHAM-632602. ... PETITIONER in WP No.6396 of 2015

VS

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATMA GANDHI ROAD NUNGAMBAKKAM CHENNAI- 34.

2 THE ADDITIONAL COMMISSIONER
OF CENTRAL EXCISE CHENNAI III
COMMISSIONERATE 26/1 MAHATMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI-34.

3 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE AND SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-
632 403

4 THE STATE BANK OF INDIA
RANIPET BRANCH RANIPET
... RESPONDENT in WP No.5452 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATMA GANDHI ROAD NUNGAMBAKKAM CHENNAI- 34.

2 THE ADDITIONAL COMMISSIONER
OF CENTRAL EXCISE CHENNAI III
COMMISSIONERATE 26/1 MAHATMA GANDHI ROAD
NUNGAMBAKKAM CHENNAI-34.

3 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX HOSUR I
DIVISION THALLY ROAD HOSUR-635 109.

4 INDIAN OVERSEAS BANK
KRISHNAGIRI-635 001.
... RESPONDENT in WP No.5453 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATHMA GANDHI ROAD NUNGAMBAKKAM CHENNAI-34.

2 THE ADDITIONAL COMMISSIONER OF
CENTRAL EXCISE CHENNAI III COMMISSIONERATE
26/1 MAHATHMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI-34.

3 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-
632 403.

4 THE STATE BANK OF INDIA
ARAKKONAM BRANCH ARAKKONAM.

... RESPONDENT in WP No.5667 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATHMA GANDHI ROAD NUNGAMBAKKAM CHENNAI- 34.

2 THE ADDITIONAL COMMISSIONER OF
CENTRAL EXCISE CHENNAI III COMMISSIONERATE
26/1 MAHATHMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI-34.

3 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-
632 403.

4 THE INDIAN OVERSEAS BANK
NO.49 KOMUTTI STREET WALAJAHPET BRANCH
WALAJAHPET-632 513 VELLORE DISTRICT.

... RESPONDENT in WP No.5668 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATHMA GANDHI ROAD NUNGAMBAKKAM CHENNAI- 34.

2 THE ADDITIONAL COMMISSIONER OF
CENTRAL EXCISE CHENNAI III COMMISSIONERATE
26/1 MAHATHMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI-34.

3 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-
632 403.

4 STATE BANK OF INDIA
ARCOT BRANCH 144/82 JEEVANANDHAM SALAI
ARCOT-632 503.

...RESPONDENT in WP No.5669 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATMA GANDHI ROAD NUNGAMBAKKAM CHENNAI-34.

2 THE ADDITIONAL COMMISSIONER OF
CENTRAL EXCISE CHENNAI III COMMISSIONERATE
26/1 MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI-34.

3 THE ASSISTANT COMMISSIONER OF
CENTRAL EXCISE & SERVICE TAX VELLORE
DIVISION BARRACKS MAIDEN VELLORE-632001.

4 STATE BANK OF INDIA
AMBUR NO.4 KAKA CHANDA MIYAN AMBUR-635802.
...RESPONDENT in WP No.5727 of 2015

1 THE COMMISSIONER OF CENTRAL
EXCISE CHENNAI III COMMISSIONERATE 26/1
MAHATMA GANDHI ROAD NUNGAMBAKKAM CHENNAI-34.

2 THE ADDITIONAL COMMISSIONER OF
CENTRAL EXCISE CHENNAI III COMMISSIONERATE
26/1 MAHATMA GANDHI ROAD NUNGAMBAKKAM
CHENNAI-34.

3 THE ASSISTANT COMMISSIONER OF
CENTRAL EXCISE & SERVICE TAX VELLORE
DIVISION CENTRAL REVENUE BUILDING VELLORE-
632001.

4 THE BRANCH MANAGER
THE STATE BANK OF INDIA NO.15 RAILWAY
STATION ROAD KONDASAMUDRAM GUDIYATHAM-
632602.
...RESPONDENT in WP No.6396 of 2015

Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus,

WP No.5452 of 2015
Calling for the records from the 3rd respondent wherein direction dated 20.2.2015 in C.No.IV/16/ 77/2014 S.Tax was issued to the 4th respondent to freeze the Bank Account of the petitioner to the extent of Service Tax due of Rs.29,48,526/- and penalty of Rs.21,47,081/- totaling to Rs.51,25,607/- and quash the same and to direct the 3rd respondent to revoke the Notice dated 20.2.2015 issued to the 4th respondent for freezing of the Bank Account of the petitioner

WP No.5453 of 2015

Calling for the records from the 3rd respondent wherein direction dated 20.2.2015 in C.No.IV/16/ 77/2014 S.Tax was issued to the 4th respondent to freeze the Bank Account of the petitioner and to pay an amount of Rs.80,20,912/- (Service Tax of Rs.42,83,009/- and Penalty of Rs.37,37,903/-) to the Service Tax Account Government of India, which has been debited from the petitioner Bank Account on 17.2.2015 quash the same and to direct the 3rd respondent to refund the payment to the Bank Account of the petitioenr maintained by the 4th respondent

WP No.5667 of 2015

Calling for the records from the 3rd respondent wherein direction was issued vide letters dated 25.2.2015 from the File C.No.IV/16/ 77/2014 - ST to the 4th respondent to freeze the Bank Account of the petitioner and quash the same and to pay the confirmed demands vide orders in Original No.5/2013 dated 25.7.2013 and 2/2014 dated 4.7.2014 to the Service Tax Account, Government of India

WP No.5668 of 2015

Calling for the records from the 3rd respondent wherein direction dated 20.2.2015 was issued from the File C.No.IV/16/ 77/2014 to the 4th respondent to freeze the Bank Account of the petitioner to the extent of Service Tax due of Rs.25,92,860/- and penalty of Rs.20,53,119/- totaling to Rs.46,55,979/- and to quash the notice dated 20.2.2015 issued from the File C.No.IV/16/ 77/2014 to the 4th respondent for freezing of the Bank Account of the petitioner direction

WP No.5669 of 2015

Calling for the records from the 3rd respondent wherein direction dated 20.2.2015 was issued from the File C.No.IV/16/ 77/2014 to the 4th respondent to freeze the Bank Account of the petitioner to the extent of Service Tax Department to the demands confirmed against the petitioner to a total extent of Rs.64,05,165/- to the Service Tax Account, Government of India, and to quash the notice dated 20.2.2015 issued from the File C.No.IV/16/ 77/2014 to the 4th respondent for freezing of the Bank Account of the petitioner direction

WP No.5727 of 2015

Call for the records from the 3rd Respondent, wherein direction dated 19.02.2015 was issued from the file C.No. IV/16/137/2012-STC, to the 4th Respondent to freeze the Bank Account of the Petitioner & to pay to the account of the Service Tax Department to the demands confirmed against the petitioner, to a total extent of Rs.32,09,364/- plus appropriate interest (Service Tax of Rs.15,99,682/- & Penalty of Rs.16,09,682/-) to the Service Tax Account, Government of India and to quash the notice dated 19.02.2015 issued from the file C.No. IV/16/137/2012-STC to the 4th Respondent for freezing of the Bank Account of the Petitioner

WP No.6396 of 2015
To call for the records from the 3rd Respondent, wherein direction dated 27.02.2015 was issued from the file C.No. IV/16/137/2012-STC, to the 4th Respondent to freeze the Bank Account of the Petitioner to the extent of service tax due of Rs.28,14,441/- and penalties of Rs.28,14,441/- & Rs.10,000/- totaling to Rs.56,38,882/- and to quash the notice dated 27.02.2015 issued from the file C.No. IV/16/137/2012-STC and direct the 4th Respondent for freezing of the bank account of the Petitioner

For Petitioners : Mr.G.Natarajan

For Respondents : Mr.T.Chandrasekaran for R1 to 3

COMMON ORDER

Petitioners have come forward with the aforesaid prayer.

2. The Commissioners of respective Municipalities have come forward with these writ petitions praying to quash the notices issued by the third respondent wherein and by which the bank account of the respective municipality have been ordered to be freezed for non-payment of service tax due and payable by them.

3. The petitioners-Municipality are in-charge of water distribution to the respective areas under their jurisdiction. According to the petitioners, they have rented out their immovable properties such as land and buildings to various persons on annual lease to facilitate them to effect the water distribution to the consumers. While so, a show cause notice was issued by the second respondent to the petitioners herein proposing to demand service tax on the ground that the petitioners did not register themselves with the service tax department for rendering various service to the consumers and collecting fee in the form of parking fees, market fees, bus fees, pay and use toilets, slaughter house charges etc., to the consumers within their jurisdiction. The petitioners have submitted their reply stating that they are not aware of the service tax liabilities under the Finance Act and hence, they did not collect service tax from the licencees and/or lessees/contractors. It is further stated that when they resorted to collect the service tax from the licencees and/or lessees, they have approached this Court by filing WP Nos. 8237 of 2013 etc., and they are pending. Due to the pendency of the writ petitions, the petitioners could not collect the service tax from the licencees and/or lessees/contractors. Inspite of such reply having been given by the petitioners, the second respondent confirmed the proposal and demanded service tax together with penalty. Challenging the orders demanding service tax, the petitioners have filed appeals before the Commissioner of Central Excise (Appeals)

Chennai together with an application for interim stay.

4. In this context, it is necessary to cull out the details of the show cause notice, reply given by the petitioner and the order passed by the respective respondent, the details of which are given below:-

W.P.No. 5452 of 2015 was filed by the Commissioner of Ranipet Municipality. The Second respondent issued a show cause notice dated 03.10.2012 and another show cause notice dated 15.07.2013. A reply dated 10.07.2013 was given to the show cause notice dated 03.10.2012 citing the pendency of writ petitions filed by the licencees/contractors before this Court and therefore they could not comply with the demand for payment of service tax demand. In the meantime, the petitioner municipality also filed filed a statutory appeal before the Commissioner of Central Excise (Appeals) together with a petition for interim stay. The appeal is pending. Pending the appeal, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

Similarly, in the case of the petitioner in WP No. 5453 of 2015 namely Commissioner of Krishnagiri Municipality, a show cause notice dated 03.10.2012 and 19.10.2012 were issued by the second respondent for which a reply was sent by them. Thereafter, an order dated 31.07.2013 was passed by the second respondent confirming the levy. On receipt of the final order dated 31.07.2013, the petitioner has sent a letter dated 07.07.2014 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake , which according to them are apparent on the face of record. Such a request for rectification made by the petitioner was rejected by the second respondent on 05.08.2014. Challenging the same, the petitioner has filed a statutory appeal before the Commissioner of Central Excise (Appeals) Chennai and the appeal is pending. Pending the appeal, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

WP No. 5667 of 2015 was filed by The Commissioner, Arakonam Municipality contending that on 22.10.2012 and 19.04.2013, the second respondent issued a show cause notice proposing to demand service tax, for which a reply was given by the petitioner. Notwithstanding such reply, the second respondent confirmed the levy by an order dated 25.07.2013. Thereafter, the petitioner sent a letter dated 26.02.2015 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner has filed a Review Application before the Additional Commissioner of Central Excise, Chennai III & Assistant Commissioner of Central Excise, Ranipet Division and the same is pending. Pending the Review Application, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

WP No. 5668 of 2015 was filed by The Commissioner, Walajah Municipality. In this case, show cause notices dated 22.10.2012 and 15.07.2013 were issued by the second respondent. Thereafter, a personal hearing was given to the petitioner municipality during which the Junior Assistant, Walajah Municipality appeared and submitted a written explanation. Notwithstanding such explanation, the second respondent confirmed the levy. Challenging the order for payment of service tax with penalty, the petitioner has filed A. Nos. 55 and 56 of 2014 (M-III) (ST) before the Commissioner of Central Excise (Appeals), Chennai and the same is pending. Pending the appeal, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

WP No. 5669 of 2015 was filed by The Commissioner, Arcot Municipality. Originally, show cause notices dated 22.10.2012 and 15.07.2013 were issued by the second respondent and after getting a reply from the petitioner, orders dated 25.07.2013 and 02.01.2014 were issued against the petitioner confirming the levy. Thereafter, the petitioner sent a letter dated 26.02.2015 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 5727 of 2015 was filed by The Commissioner, Ambur Municipality. The second respondent issued notice dated 22.10.2012 proposing to levy service tax for which a reply was issued by the petitioner. Notwithstanding such reply, an order dated 25.07.2013 was passed by the second respondent confirming the levy. As against the same, the petitioner has filed an appeal in Appeal No. 40057 of 2014 before the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai. The said appeal was dismissed by the Tribunal holding that it is not maintainable and liberty was given to the petitioner to prefer an appeal before the competent authority. Thereafter, the petitioner sent a letter dated 27.02.2015 to the second respondent purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P No. 6396 of 2015 was filed by the Commissioner, Gudiyatham Municipality. Originally, a show cause notice dated 21.10.2013 was issued to the petitioner proposing to impose service tax. A reply was given by the petitioner which was not considered and an order dated 25.03.2014 was passed by the second respondent confirming the levy. Challenging the same, the petitioner filed an appeal in NO.10/2014 before the Commissioner of Central Excise (Appeals), Chennai and the said appeal is pending. Pending the appeal, the petitioner's bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

5. Admittedly, to realize the service tax amount due and payable by the petitioners, the respective respondent had issued instructions to the respective bank where the petitioner is maintaining their account. Pursuant to such order to freeze the bank account, the service tax amount due and payable by the petitioners have been realized. Therefore, no relief could be granted to the petitioners in these writ petitions. It is also brought to the notice of this Court that the petitioners have assailed the final order passed by the respective respondent for recovery of service tax amount with penalties before the appellate authority and the appeals filed by them are pending. Therefore, it is needless to mention that the petitioner's entitlement to get the service tax recovered from them will depend upon the outcome of the appeals preferred before the appellate authority.

6. At this juncture, it is brought to the notice of this Court that in view of the freezing of the bank account of the petitioner municipality, they could not pay salary to the staff, meet the day to day administrative expenses and to honour the various commitments they owe towards the contractors and or service providers. Therefore, the learned counsel for the petitioners would pray this Court to issue appropriate direction to the Appellate Authority to dispose of the appeals preferred by the respective petitioners within a time frame.

7. Having regard to the above submission of the counsel for the petitioners, this Court directs the Commissioner of Central Excise (Appeals), Chennai to dispose of the statutory appeals preferred by the respective petitioners on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

8. In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner of Central Excise
Chennai III Commissionerate,
26/1, Mahtma Gandhi Road
Nungambakkam, Chennai-600 034

2.The Additional Commissioner of Central Excise
Chennai III Commissionerate,
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai-600 034

3.The Assistant Commissioner of
Central Excise & Service Tax
Vellore Division
Central Revenue Building
Vellore-632 001

4. THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE AND SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-632 403

5 THE STATE BANK OF INDIA
RANIPET BRANCH RANIPET

6. THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX HOSUR I
DIVISION THALLY ROAD HOSUR-635 109.

7 INDIAN OVERSEAS BANK
KRISHNAGIRI-635 001.

8 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-632 403.

9 THE STATE BANK OF INDIA
ARAKKONAM BRANCH ARAKKONAM.

10 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-632 403.

11 THE INDIAN OVERSEAS BANK
NO.49 KOMUTTI STREET WALAJAHPET BRANCH
WALAJAHPET-632 513 VELLORE DISTRICT.

12 THE ASSISTANT COMMISISONER OF
CENTRAL EXCISE & SERVICE TAX RANIPET
DIVISION SIPCOT INDUSTRIAL COMPLEX RANIPET-
632 403.

14 STATE BANK OF INDIA
ARCOT BRANCH 144/82 JEEVANANDHAM SALAI
ARCOT-632 503.

15 THE ASSISTANT COMMISSIONER OF
CENTRAL EXCISE & SERVICE TAX VELLORE
DIVISION BARRACKS MAIDEN VELLORE-632001.

16 STATE BANK OF INDIA
AMBUR NO.4 KAKA CHANDA MIYAN AMBUR-635802.

17 THE ASSISTANT COMMISSIONER OF
CENTRAL EXCISE & SERVICE TAX VELLORE
DIVISION CENTRAL REVENUE BUILDING VELLORE-
632001.

18 THE BRANCH MANAGER
THE STATE BANK OF INDIA NO.15 RAILWAY
STATION ROAD KONDASAMUDRAM GUDIYATHAM-
632602.

1CC to Mr.T. Chandrasekaran, SR 14897

7CCs to Mr.S.Jayakumar, SR 14817

W.P.Nos. 5452, 5453, 5667 to 5669,
5727 and 6396 of 2015

cnr [CO]
kk, psi, pmk, eu, ca 04.05.2015