IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.11.2016
CORAM
THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.No.15224 of 2013
&
MP.No.1 of 2013

P.Murugesan .. Petitioner

Versus

1.The Commissioner
Coimbatore Municipal Corporation
Coimbatore.

2.The Asst. Commissioner(West Zone)
Coimbatore Municipal Corporation,
Coimbatore.
. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus forbearing the respondent from collecting the service tax for the remaining lease period 2013-14 and 2014-15 or alternatively direct the respondent to permit the petitioner to collect the value of service tax by increasing the parking fees by a suitable order.

For Petitioner : Mr.B.Nedunchezhiyan
For Respondent : Mr.J.Sathyanarayana Prasad

O R D E R

Challenging the levy of Service Tax for the lease period 2013-14 and 2014-15 demanded by the respondent , the petitioner has filed this Writ Petition.

2. Mr.B.Nedunchezhiyan, learned counsel for the petitioner submits that the petitioner was a successful bidder in the auction held on 31.08.2012 for collection of parking fees of two and four wheelers at Diwan Bahadhur Road, Corporation school premises,Coimbatore for the year 2012 -2015 for a total bid of Rs.17,26,000/- and the yearly lease amount from 01.10.2012 to 31.03.2013 was determined at Rs.8,63,000/-. Drawing my attention of the demand made in the year 2012, learned counsel would submit that no service tax was imposed during the demand made in the year 2012 and that the present demand made by the respondent for the period from 01.04.2013 to 31.03.2014 includes a sum of Rs.2,24,000/- towards the Service

Tax. Since the respondent has not collected the Service Tax for the period 2012-13, they are precluded from collecting the same for the subsequent renewal period of 2013-14. On this ground this, Writ Petition has been filed.

3. Mr.J.Sathya Narayana Prasad, learned counsel for the first respondent would submit that the service of the petitioner is a taxable service as defined under Rule 65(105) of the Service Tax Rules. Since the Service Tax Rules of the Central Government came into force on 01.06.2007, the petitioner is liable to pay Service Tax. The learned counsel would also submit that the Commissioner of Customs, Central Excise and Service Tax, Coimbatore had issued a showcause notice to the Corporation demanding payment of Service Tax. Against which, the corporation had preferred an Appeal before the Commissioner of Customs and Central Excise and Service Tax, Coimbatore which was also rejected. Pursuant to that, the Corporation had decided to recover the Service Tax from all the allottees/licencees and had passed a resolution on 27.02.2012 to collect Service Tax from all the licencees.

4. The learned counsel for the petitioner further submitted that the Service Tax for the period 2012-13 was not collected and that has been clearly explained by the respondents in the counter affidavit. The Corporation had resolved to collect Service Tax from its licencees pursuant to the resolution dated 27.02.2012 and in view of the same, the Service Tax was not collected from the petitioner from the period prior to 27.02.2012.

5.The learned counsel for the petitioner would further submit that pursuant to the present demand dated 01.04.2013, the petitioner had submitted a reply on 02.04.2013 stating that he is not liable to pay the Service Tax.

6. It is needless to point out that if any representation is given by the petitioner in this regard, it is the duty of the respondents to give a reply to the same particularly, when there is a considerable amount of tax due from the petitioner.

7. In view of the above, there is no merit in the Writ Petition. Accordingly, the Writ Petition stands dismissed. Neverthless, the respondent is directed to take up the petitioner's reply dated 02.04.2013 and pass suitable orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

8. With the above observation, the Writ Petition is dismissed. No costs. Consequently, Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner
Coimbatore Municipal Corporation
Coimbatore.

2.The Asst. Commissioner(West Zone)
Coimbatore Municipal Corporation,
Coimbatore.

+1 cc to M/s.J.Sathya Narayana Prasad Advocate
sr63738

W.P.No.15224 of 2013

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aa15/12/2016