IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

Date of Reserving the Order	***Date of Pronouncing the Order***
24.08.2017	**05.10.2017**

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22792 of 2017 &
W.M.P.No.23917 of 2017

M/s.Priya Construction,
Rep., by P.Sivakumar, Managing Partner,
No.1/1, Kadachanallur PO,
Pallipalayam Agraharam,
Namakkal – 638 008 ... Petitioner

Vs.

The Joint Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem – 636 001. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records comprised in Order-in-Original Sl.No.09/2017-ST(JC), dated 19.01.2017, on the file of the respondent and quashing the same.

For Petitioner : Ms.D.Naveena

For Respondent : Mrs.Hema Muralikrishnan

ORDER

Heard Ms.D.Naveena, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing counsel for the respondent.

2. The petitioner has filed this Writ Petition challenging the order passed by the respondent being Order-in-Original No.9/2017-ST(JC), dated 19.01.2017. By the impugned order, the respondent has confirmed the demand of service tax, as demanded under Section 73(2) of the Finance Act, 1994, in the show cause notice dated 15.10.2015, levied interest under Section 75 of the Act and imposed penalty under Section 77(2) and Section 78 of the Finance Act, 1994. Record of the proceedings would show that the Writ Petition was filed in the registry of this Court on 07.04.2017. However, the same has been numbered and listed before this Court only on 24.08.2017. The reason now given by the learned counsel for the petitioner for not being able to number and list the matter earlier is not convincing.

3. Be that as it may, as against the impugned order, the petitioner has an alternate remedy of filing an appeal before the

Commissioner (Appeals-I), Coimbatore and without resorting to such remedy, the petitioner is before this Court by way of this Writ Petition.

4. The learned counsel for the petitioner would contend that the primary issue involved in the present case is one of jurisdiction, as for a composite contract involving material supply and provision of service, service tax can be demanded only on the service portion and the respondent does not have a jurisdiction to levy service tax on the value of the materials. It is submitted that this exercise is clearly without jurisdiction, more particularly, in the light of the decision of the Hon'ble Supreme Court in the case of ***CCE, Kerala vs. L&T*** reported in ***2015 (39) STR 913 (SC)***. It is submitted that in exceptional cases, this Court can invoke its extraordinary jurisdiction under Article 226 of the Constitution of India. In support of her contention, the learned counsel placed reliance on the decision in the case of ***M/s.G.Ramamoorthi Construction (I) Pvt Ltd., vs. The Commissioner of Central Excise & Ors.,*** reported in ***2015 TIOL-1933-HC-MAD-ST.***

5. The learned counsel took great pains in taking me the factual matrix with a view to convince the Court that the respondent

had committed serious error in levying service tax. The High Court only in exceptional cases (as admitted by the petitioner) can invoke its extraordinary jurisdiction under Article 226 of the Constitution, when there is an adequate effective and efficacious alternate remedy available to the litigant. The points canvassed before me by Ms.D.Naveena, are not pure questions of law, but intricate factual issues, which cannot be adjudicated in a Writ Petition. The case on hand is not an exceptional case for this Court to permit the petitioner to bypass the adequate efficacious and effective alternate remedy.

For the above reasons, the Writ Petition is dismissed as not maintainable. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2017

Index:Yes/No
pbn

Note: Registry is directed to return the original impugned order after substituting the same with the certified copy.

To

The Joint Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem – 636 001.

T.S.SIVAGNANAM, J.

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Pre-Delivery Order in
W.P.No.22792 of 2017 &
W.M.P.No.23917 of 2017

05.10.2017