In the High Court of Judicature at Madras

Dated : 11.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24298 of 2017 & WMP.No.25704 of 2017

M/s.R.R.Thulasi Builders India (P) Ltd., Erode rep. by R.R.Sathiyamurthy, Executive Director ...Petitioner

Vs

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

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records comprised in Order in Original Sl.No.10/2017 - JC(ST) dated 19.1.2017 on the file of the respondent and quash the same.

For Petitioner : Ms.D.Naveena
For Respondent : Mrs.Hema Muralikrishnan, Senior Panel Counsel

ORDER

Mrs.Hema Muralikrishnan, learned Senior Panel Counsel accepts notice for the respondent. Heard both.

2. The petitioner has impugned the order passed by the respondent, which is an Order-in-Original demanding payment of service tax for the contract performed by the petitioner for the Central Public Works Department as their sub-contractor.

3. The learned counsel for the petitioner submits that the respondent ought to have considered the fact that the petitioner, being a sub-contractor, cannot be construed as a service provider and that the Central Public Works Department cannot be considered as a service recipient. According to the learned counsel, the respondent ought to have considered the fact that the construction has been put up for Central Universities and that therefore, the petitioner is entitled to exemption.

4. The learned counsel for the petitioner has referred to various paragraphs in the impugned order to state that the respondent has not considered the factual matrix as well as the legal position.

5. As rightly pointed out by the learned Senior Panel Counsel for the respondent, the impugned order has been passed on 19.1.2017 and it was received by the petitioner on 10.2.2017. However, there is no explanation as to why the petitioner did not avail the alternate remedy and approached this Court at this juncture.

6. Be that as it may, the points canvassed before this Court are not purely jurisdictional issues, but mixed questions of fact and law. On a cursory perusal of the impugned order, it is seen that the petitioner has not placed for consideration the terms and conditions of the agreement between the petitioner and the Central Public Works Department. If, in the said agreement, the petitioner has irrevocably agreed to pay all taxes and other charges, then, it will be rather doubtful as to whether the petitioner can raise such contentions after having entered into such a contract with the Central Public Works Department. In any event, all issues being purely mixed questions of law and fact, the petitioner has to agitate the same before the Appellate Authority namely the Commissioner of Appeals. It is not known as to whether the appeal would be within the period of limitation and as to whether it would be time barred. However, it will be open to the petitioner to avail the alternate remedy provided under the Statute. On the grounds raised by the petitioner, this Court is not inclined to entertain the writ petition.

7. Accordingly, the writ petition is dismissed as not maintainable, leaving it open to the petitioner to avail the alternate remedy provided under the Statute. No Costs. Connected M.P. is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Joint Commissioner of Central Excise, No.1,
Foulks Compound,
Anai Road, Salem-1.

2. The Section Officer
E.R. Section, High Court, Madras(For returning the impugned order)

+1 Cc to Mr.S. Durairaj, Advocate sr 65826.
+1 Cc to Mrs. Hema Muralikrishnan, Advocate sr 65811.

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WMP.No.25704 of 2017

GR(CO)
sp(11/10/2017)