IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM.

W.P.No.18354 of 2017
and W.M.P.No 19924 of 2017

M/s.Navasakthi Township Developers Private Limited,
Rep.by its Managing Director,
East Coast Road(Puduchery-Cuddalore Road),
Periyakattupalayam Village,
Ariyanuppan Post,
Puducherry-605 007.
.. Petitioner

Vs

The Commissioner of Central Excise & Service Tax,
Post Box No.104,
Gouber Avenue,
Puducherry -605 001. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the case in impugned Orde in Original No.27 &28/2017 (C)(ST),//C.No.V/ST/15/162/2014-ST ADJ, dated, 24.04.2017, and passed by the respondent and to quash the said order in Original passed by the respondent.

For Petitioner : Mr.T.Ramesh

For Respondent : M/s. R.Hemalatha
Senior Panel Counsel

ORDER

Heard Mr.T.Ramesh, learned counsel for the petitioner and M/s.R.Hemalatha, learned Senior Panel Counsel for the respondent

2.The petitioner has filed this writ petition challenging an order-in-original dated 24.04.2017 passed by the respondent, whereby an amount of Rs.5,41,01,083/- has been demanded towards the service tax payable by the petitioner for the period from

2008-09 to 2011-12 under Section 73(2) of the Finance Act, 1994. Apart from that, there is also a demand for interest and levy of penalty. Earlier, the petitioner had approached this Court and filed a writ petition challenging an order passed by the respondent for the very same assessment years demanding service tax. The said writ petition in W.P.No.23556 of 2013 was allowed by order dated 20.06.2016 on the ground that the order was in violation of the principles of natural justice. Upon remand, de nova proceedings were conducted by the respondent and the respondent has passed the speaking order.

3.This Court raised the preliminary objection as regards the maintainability of the writ petition since as against the impugned order, the petitioner has an effective alternate remedy before the CESTAT and as to how the petitioner could maintain the writ petition.

4.The learned counsel appearing for the petitioner would submit that the definition of construction of residential complex cannot be applied to the construction of individual house and the petitioner having constructed only a single dwelling unit and no building was constructed with more than one single dwelling unit and the construction of new houses for each individual having single dwelling unit having not been disputed by the respondent, the definition of construction of residential complex would not apply to the petitioner's case and therefore, the impugned order is not sustainable. In this regard, the learned counsel has referred to certain clauses in the agreement for development.

5.Apart from that, it is submitted that the petitioner has filed a writ petition seeking declaratory relief before this Court stating that the nature of activity done by the petitioner would not attract service tax. However, there is no interim order in the said writ petition, but as of now, the said writ petition has virtually become infructuous since the proceedings were initiated and it has culminated in an order demanding service tax.

6.Apart from the above two contentions, the learned counsel also stated that the show cause notice is barred by limitation and the extended period of limitation cannot be invoked in the facts and circumstances of the present case. All the three contentions raised by the petitioner are factual. The question as to whether the building put up by the petitioner falls within the definition of construction of residential complex is purely a question of fact. That apart, the question of limitation also is not purely a question of law but a mixed question of fact and law. The challenge is with regard to invocation of extended period of limitation. This aspect has to be factually challenged by the petitioner. Thus, for all the above reasons, the writ petition cannot be maintained and the petitioner has to necessarily avail the alternate remedy of appeal provided under the Act.

7.For the above reasons, it is held that the writ petition is not maintainable and the same is dismissed leaving it open to the petitioner to approach the CESTAT, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cse

To

The Commissioner of Central Excise & Service Tax,
Post Box No.104,
Gouber Avenue,
Puducherry -605 001.

+1 cc to Mrs.R.Hemalatha Advocate sr 50548
+1 cc to M/s.T.Ramesh Advocate sr50471

W.P.No.18354 of 2017
and W.M.P.No 19924 of 2017

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