THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

Writ Petition No.32786 of 2017

DATED:06-11-2017

Between:

M/s. Sri Ganesh KTPP Contract Workers' Welfare Society
Suit No.5, KTPP Colony
Chelpur Village, Ghanpur Mandal
Warangal District
Rep. by its President Vanga Satish … Petitioner

And

Union of India
Rep. by its Joint Secretary – Finance
Ministry of Finance
New Delhi
and others … Respondents

COUNSEL FOR THE PETITIONER: Mr. C. Raghu

COUNSEL FOR RESPONDENT NOs.1 and 2: Smt. Sundari R. Pisupati

COUNSEL FOR RESPONDENT NO.3: Smt. A. Deepthi

THE COURT MADE THE FOLLOWING:

<u>ORDER:</u> *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This writ petition is filed for issue of mandamus to set aside order No.07/2016-Hyd-III-Adjn (ST), dated 28.12.2016, of respondent No.2.

Sri C. Raghu, learned counsel for the petitioner, submitted that under the contract between his client and respondent No.3 pertaining to supply of manpower, his client is liable to pay 25% service tax and respondent No.3 is liable to pay 75% service tax and that for the assessment years 2014-2015 and 2015-2016, the petitioner has paid its liability of 25% and respondent No.3 has paid its liability of 75% service tax even before the impugned order was passed.

Smt. Sundari R. Pisupati, learned counsel for respondent Nos.1 and 2, submitted that if the petitioner and respondent No.3 together have paid the entire service tax due for the aforementioned years, the Department will not proceed against them for recovery in respect thereof.

The learned counsel for the petitioner submitted that under the contract with respondent No.3 entered into by the petitioner, the former is liable to reimburse even the 25% of the service tax. The petitioner, however, failed to file the agreement between the parties. In the absence of such an agreement, it is not possible for this Court to adjudicate upon this aspect. The petitioner is, however, permitted to make a representation to respondent No.3 in this regard. Within four weeks from the date of receipt of such representation, respondent No.3 shall decide whether the petitioner is entitled to reimbursement of the service tax paid by it under the contract and if it is so entitled, respondent No.3 shall pay the same within the above stipulated time. If respondent No.3 is of the view that the petitioner is not entitled to such reimbursement, it shall pass an appropriate order and communicate the same to the petitioner.

As regards the interest and penalty imposed on the petitioner, the same, in our opinion, needs to be challenged by the petitioner by availing the remedy of appeal.

Subject to the above observations and directions, the writ petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P. No.40760 of 2017 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

06-11-2017

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