IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2018
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.A.No.756 of 2018
and
CMP No.7173 of 2018

Nandhini Constructions,
Rep. by a Partner cum Authorised Signatory,
83/1/3, 1st Street, Bharathipalayam,
Near AM Kalyanamandapam,
Moolapalayam, Erode - 638 002. .. Appellant

versus

1. The Government of India,
rep. by its Secretary,
Ministry of Finance, New Delhi.

2. The Superintendent of Central Excise,
Erode-II Range,
81, Bharathinagar, Soolai, Erode - 638 004.

3. The Deputy Commissioner,
GST & Central Excise,
Audit Circle, Salem,
No.1, Foulkes Compound,
Anaimedu, Salem - 636 001.

4. The Government of Tamilnadu,
rep. by its Secretary,
Finance Department, Secretariat, Chennai-9.

5. The Chief Engineer-in-Chief
(Buildings & Chief Engineer (Building) Chennai Region
& Chief Engineer General),
Public Works Department,
Chepauk, Chennai - 5.

6. The Chief Engineer (PWD),
Technical Education Centre,
Guindy, Chennai-25.

7. The Superintending Engineer (PWD),
Buildings (C&M) Circle,
Vellore-1.

8. The Superintending Engineer (PWD),
Buildings (C&M) Circle,
Trichy-1

9. The Executive Engineer (PWD),
Technical Education Division,
Tirunelveli.

10. The Executive Engineer (PWD),
Technical Education Division,
Railway Station Road, Thanjavur.

11. The Executive Engineer (PWD),
Buildings (C&M) Division, Villupuram.

12. The Executive Engineer (PWD),
Buildings (C&M) Division,
Court Campus, Nagapattinam - 1.

13. The Executive Engineer (PWD),
Water Resources Department,
Bhavanisagar Dam, Coimbatore.

14. The Estate Officer,
Tamilnadu Fisheries University,
1st Line Beach Road, Nagapattinam-1.

15. The Financial Officer,
Tamilnadu Fisheries University,
1st Line Beach Road, Nagapattinam-1 .. Respondents

Writ Appeal filed against the order dated 20.03.2018 in WMP No.1486 of 2018 in W.P.No.1185 of 2018.

WMP.NO. 1486 of 2018: Petition under section 151 of CPC Prayed that this Hon'ble Court may be pleased to grant an interim injunction restraining the respondents 1 to 3 from insisting payment of service tax for works contract service other than commercial nature rendered by the petitioner to the Government of TamilNadu during the period from 01.04.2015 to 30.06.2017 pending disposal of this above writ petition No. 1185/2018.

Prayer Writ petition under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in respect of issue of Notification No.6/2015-Service Tax dated 01.03.2015 published in Government of India Gazette Extraordinary Part II Section 3 Sub-Section (i) No.120 on 01.03.2015 and quash the same and consequently direct the 1st respondent grant exemption for the petitioner from paying the service tax in respect of the works contract service other than commercial nature to the Government local bodies Statutory authorities etc. with effect from 01.04.2015 and consequently to reimburse the service tax and interest thereon already paid by the petitioner to the 1st respondent in respect of the said nature of works contract service to Government, local bodies, statutory authorities etc., Or Alternatively, in the event of this Honourable Court upholding the impugned notification, to issue a Writ of Mandamus directing the respondents 4 to 15 to reimburse the service tax and the interest thereon, that has already been, and that hereinafter would be, paid in respect of the works contract service other than commercial nature rendered by the petitioner to the Government of Tamilnadu during the period from 01.04.2015 to 30/06/2017 within a time frame as any be fixed by this Honourable Court and further to direct the Government of Tamilnadu to pay appropriate interest on the said amount of reimbursement at the rate as may be fixed by this Honourable court in case of delay in reimbursing the same.

For Appellant : Mr.N.Subramanian
For Respondents: Mr.Rajnish Pathiyil (for R1 to R3)
Sr. Central Govt. Standing Counsel
Mr.Rp.Prathap Singh (for R4 to R13)

JUDGMENT
(Order of the Court was delivered by S.MANIKUMAR, J.)

Appellant is a contractor carrying on civil works, since 1987. Appellant has entered into works contract with Government of Tamil Nadu through respondents 5 to 15 for carrying out several construction and other works. Between 2015 and 2016, appellant has entered into 19 contracts and carried out work from 01.04.2015 to 30.06.2017. Tender conditions in all the above contracts includes (a) the rates specified in the schedule for the different items of works are for the finished works (b) the contractor's rates are inclusive of sales tax payable by the contractor to Government as per the Tamil Nadu General Sales Tax Act, 1939, as amended from time to time. No enhanced rate would be paid to the contractor, for any upward revision of sales tax, during the currency of the contract.

2. Appellant has contended that he did not quote rates including service tax which was in vogue from 01.04.2015 to 30.06.2017. According to the appellant, works contract to Government, other than Commercial nature, was exempted by the Government of India, Ministry of Finance, New Delhi, 1st respondent in notification No.25 of 2012. But the exemption has been withdrawn with effect from 01.04.2015, and as per the subsequent notification dated 01.04.2015, all the contractors who execute public works under various departments of Government are liable to pay service tax. When service tax was liable to

be paid by the subsequent notification from 01.04.2015, demand for Rs.1.39 crore was made.

3. The appellant was issued with notice dated 30.01.2017, directing payment of service tax due and the same is extracted hereunder:

Sub: Service Tax - Detailed Manual Scrutiny of Returns 2015-
16 - Non-payment of Service tax - Regarding.

Please refer to this office letters O.C.No.542/2016 dated 30.06.2016, O.C.No.731/2016 dated 22.08.2016 & O.C.No.789/2016 dated 28.09.2016 on the above subject and your letter dated 06.07.2016 seeking extension of time to submit particulars / documents for detailed manual scrutiny and your letter dated 24.11.2016 & 26.12.2016 submitting balance sheet, profit & loss account, Income Tax return, Form 26-AS, details of contract receipts for scrutiny.

2. On conducting detailed scrutiny of ST-3 returns filed by you for the period 2015-16 (Two Half Yearly Returns) as per the provisions of Rule 5A of the Service Tax Rules, 1994 and on verification of ST3 returns with that of relevant contract copies, it is observed that you have not paid certain contract receipts by claiming them as exempted services in your ST3 return. However, from the mega exemption Notification No.25/2012-ST as amended those services are taxable and you are liable to pay service tax on the concerned contract receipts. The details of such taxable services are given below:-

Para 1 : Non-payment of Service tax - Rs.3,01,600/- under Works Contract Service.

On verification of your ST3 for the HYE September 2015 and March 2016 and records submitted by you for Detailed manual scrutiny, it is observed that you have constructed protective wall arrangement to Anna University Engineering College at Pullangudi by entering into agreement with Department of Technical Education, PWD vide agreement No.:DB/D.O.IV/T.NO:20/2015-16/TEC/Dt.01.10.2015. But you have not paid service tax on the Contract receipt of Rs.52,00,000/- On enquiry, you have stated that you are claiming exemption under Notification No.25/2012-ST [S.No.12A].

In this regard, it is stated that Entry No: 12A of the Notification No.25/2012-ST read with Section 102 of the Finance Act, 2016 [validating section] provides exemption for services provided to the Government.

Relevant portion of th notification is as follows:-

G.S.R.... (E)- In exercise of the powers conferred....., the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services.

1 to 12.....

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of --

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art of cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of Section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020";

From the plain reading of the notification, it can be seen that the exemption is available on certain services viz., construction, erection, commissioning etc. when provided to the Government only when the contract is entered prior to 1st March 2015. In the instant case, you have entered in to agreement with the PWD only on 01.10.2015 for which you are not eligible to claim exemption under the said notification. Accordingly, you are liable to pay the service tax dues along with interest and penalty immediately.

Para 2 : Non-payment of Service tax - Rs.1,54,923/- under Works Contract Service.

On verification of your ST3 returns for the HYE September 2015 and March 2016 and records submitted by you for detailed manual scrutiny, it is observed that you have constructed entrance arch, name board, provided wooden dias, furniture arrangements to combined Court building at Tindivanam by entering into agreement with PWD vide agreement dt.13.01.2016. But, you have not paid service tax on the contract receipt of Rs.26,71,086/- On enquiry, you have stated that you are claiming exemption under Notification No.:25/2012-ST [S.No.12A].

From the plain reading of the notification, it can be seen that the exemption is available on certain services viz., construction, erection, commissioning etc. when provided to the Government only when the contract is entered prior to 1st March 2015. In the instant case, you have entered into agreement with the PWD only on 13.01.2016 for which you not eligible to claim exemption under the said notification. Accordingly, you are liable to pay the service tax dues along with interest and penalty.

Para 3: Non-payment of Service tax - Rs.3,61,978/- under Works Contract Service.

On verification of your ST3 returns for the HYE September 2015 and March 2016, it is observed that you have constructed Govt. High School Building at Nagapattinam by entering into agreement with PWD vide agreement dt. 13.01.2016. But, you have not paid service tax on the contract receipt of Rs.62,41,000/-. On enquiry, you have stated that you are claiming exemption under Notification No.25/2012-ST [S.No.12A].

From the plain reading of the notification, it can be seen that the exemption is available on certain services viz., construction, erection, commissioning etc. when provided to the Government only when the contract is entered prior to 1st March 2015. In the instant case, you have entered into agreement with the PWD only on 13.01.2016 for which you not eligible to claim exemption under the said notification. Accordingly, you are liable to pay the service tax dues along with interest and penalty.

Para 4: Non-payment of Service tax - Rs.40,905/- under Works Contract Service.

On verification of your ST3 returns for the HYE September 2015 and March 2016, it is observed that you have constructed 20 houses (11-MIG-II & 9-MIGIII) at Pattinamkathan in Ramanathapuram District by entering into agreement with PWD vide agreement dt. 27.11.2015. But instead, of paying full service tax you have paid only 50% service tax on the contract receipt of Rs.13,63,500/- under reverse charge mechanism treating TNHB as corporate entity.

It is noticed you are not eligible to pay 50% of Service tax dues on the contract receipts since Tamil Nadu Housing Board is not a corporate body but it is a separate Board under State Government which was constituted under the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act 17 of 1961). In short, TNHB is a Government authority. Accordingly, you are liable

to pay 100% Service tax on the contract receipts.
A detailed worksheet for calculation of service tax liability is enclosed herewith. You are requested to pay the service tax dues + interest + penalty immediately and submit the copy of the GAR-7 challan to this office immediately.

4. Contention has been made that when no service tax was collected by the appellant from Government / Tamil Nadu Housing Board for the works contract service, executed by the appellant, notice dated 30.01.2017, has been issued and responding to the demand notice dated 30.01.2017, appellant is stated to have made payment of service tax, for the demand for certain works under taken. On 02.02.2018 a huge demand of Rs.1.39 Crores has been made.

5. Inasmuch as the appellant had made payment towards service tax, which according to him not collected from Government / TNHB, appellant has filed the instant writ petition No.1185 of 2018, for a writ of certiorarified mandamus, to call for the records on the file of the 1st respondent in respect of issuance of notification dated 01.03.2015 published in Government of India Gazette Extraordinary Part II Section 3, sub-section (i) No.120 on 01.03.2015 and to quash the same and consequently, direct the 1st respondent to grant exemption for the petitioner from paying the service tax in respect of the works contract service other than commercial nature to the Government, local bodies, statutory authorities etc., with effect from 01.04.2015 and consequently to reimburse the service tax and interest thereon already paid by the petitioner to the 1st respondent in respect of the said nature of works contract service to Government, local bodies, statutory authorities or alternatively, to issue a writ of mandamus directing the respondents 4 to 15 to reimburse the service tax and the interest thereon that has already been paid in respect of the works contract service other than commercial nature rendered by the petitioner to the Government of Tamil Nadu during the period from 01.04.2015 to 30.06.2017 , within a time frame.

6. Further, having regard to the huge demand of Rs.1.39 Crores, appellant has also sought for an interim injunction restraining the respondents 1 to 3 from insisting payment of service tax for the works contract service other than commercial nature rendered by the petitioner to the Government of Tamilnadu during the period from 01.04.2015 to 30.06.2017. Though, respondents, have entered appearance, and taken time, no counter affidavit is filed.

7. Having regard to the rival submissions of the parties, writ Court, vide order dated 20.03.2018 in WMP No.1486 of 2018

in W.P.No.1185 of 2018, declined to grant injunction sought for, as hereunder:

> "6. The learned counsel appearing for the petitioner submitted that as per Section 66(b) of the Service Tax Act, the exemption should be granted to the petitioner from paying the service tax. Further, the learned counsel submitted that the petitioner is making payment of the service tax to the respondents 2 & 3 and get the service tax paid to them and get it reimbursed from the State Government and that the State Government is taking their own time to reimburse the amount, which causes hardship to the petitioner. The learned counsel also submitted that the exemption was granted to the petitioner in the year 2012, therefore, the same arrangement should continue for the subsequent years also.
>
> 7. The learned counsel appearing for the respondents 1 to 3 submitted that as per the amended provisions, exemption is given only to Government from paying the service tax and private individuals are not entitled for any exemption.
>
> 8. The learned counsel appearing for the petitioner submitted that since they are making payment of service tax to the Department and get it reimbursed they should also be given exemption under Section 66(b) of the Act.
>
> 9. However, on a reading of the provisions of the Act, it is clear that exemption was granted only to the Government and not to private individuals. As per the provisions, the petitioner has to make payment of the Service tax to the Department and get it reimbursed from the State Government as per the Rules. When thee is no exemption granted to private individuals subsequent to the year 2012, interim injunction cannot be granted in favour of the petitioner restraining the respondents 1 to 3 from insisting payment of service tax. Since the amounts paid by the petitioner towards service tax is being reimbursed by the State Government, the petitioner cannot be construed as an aggrieved party. If an interim order is granted in this petition, it would operate against the provisions of the Act. Hence, I do no find any merits in the petition. The Writ Miscellaneous Petition in W.M.P.No.1486 of 2018 is dismissed."

8. Being aggrieved, instant writ appeal is filed on the following grounds

> "a. that the writ Court failed to appreciate that the respondents from the month of January 2018 itself sought time to get instructions in respect of taking up the matter for interim relief but failed to get instructions, thereby failed to honour their

undertaking, and repeated seeking adjournment for the last 3 months and got adjournments for one reason or the other but, at the same time, the 3rd respondent is issuing notice to the appellant demanding a service tax of more than Rs.1.00 Crores without sanction of law but by colorable exercise of power which if paid would wipe out his entire capital of Rs.1.00 Crores forcing him to fail in all the ongoing works and hence the appellant begged the learned judge to consider the Misc. Petition seeking interim relief so as to protect the interest of the appellant from being ruined and hence the appellant was forced to seek interim relief which was rejected by dismissing the Misc. Petition seeking interim relief by the learned judge erroneously and hence the impugned order is liable to be quashed.

b. that the writ Court itself was of the view that the service tax has to be reimbursed by the State and that the appellant is not liable ultimately for the same, but failed to appreciate that appellant obeyed the law and paid the service tax about Rs.9.00 lakhs in the year 2015 itself which has not yet been reimbursed till this date and if the present demand of Rs.1.39 crores has to be paid, the entire 1.00 crore capital would be wiped out and would be burdened with a loan of Rs.40 lakhs, thereby would make the appellant penniless thereby forcing to default in pending works contracts with the State thereby causing grave injustice and irreparable loss which could never be compensated and therefore, writ Court has committed an error in dismissing the Misc. Petition in the impugned order and hence it is just and necessary for this Court (appellate Court), to protect the appellant from 3rd respondent, from demanding service tax.

c. that the writ Court has failed to appreciate that Sec.66-B bars, as well as it is unconstitutional for, the 1st respondent from imposing service tax on the State Government for doing service to the public without any consideration and on the facts and circumstances of this case, it is the State Government who has engaged the Appellant-contractor to perform the service to public, i.e. construction of court building and school building, which are sovereign duty of the State Government, under the Constitution, but the 3rd respondent has insisted for payment of service tax, which the writ Court has taken note of, and of the prima facie view that the appellant shall pay, in the first instance to pay the service tax in the said works contracts, and get the same, reimbursed from the State Government, without appreciating that ultimately the State Government would be forced to pay a service tax, which is barred under the Act as well as under the Constitution of India, and hence dismissing the misc. petition seeking for an interim relief by the writ Court is not correct.

d. that the writ Court failed to appreciate that when the Appellant was put into grave injustice, resulting in irreparable loss, and that too without sanction of law by colorable exercise of power by the 1st respondent and that the appellant is entitled to be protected, by granting interim orders sought for, to prevent miscarriage of justice, and to protect the appellant from harassment and that too to the extent of ruining his whole profession, life and property and hence passing of the impugned order by the writ Court, is perverse.

e. that the decision of the writ Court that if injunction is granted, it would run contrary to the statute, is patently erroneous and rendered without appreciating the pleadings and arguments of the appellants in this regard.

f. writ Court failed to appreciate that balance of convenience and justice warrants grating of interim order restraining the respondents 1 to 3 from demanding any service tax in respect of the subject matter pending disposal of the writ petition."

9. Assailing the correctness of the order of the writ Court, it is the specific contention of Mr.N.Subramaniyan, learned counsel for the appellant that service tax was not included in the tender conditions and the same was not collected by the appellant from Housing Board / Government. But responding to the demand dated 31.01.2017, service tax was paid, to the 1st respondent and reimbursement sought for, is yet be granted.

10. Inviting the attention of this Court to the demand dated 30.01.2017 for payment of service tax under various heads of work, paragraph Nos. 1, 2, 3, and 4 and payments made towards service tax for the various works, which is evident from page Nos. 102 to 108 of the typed set of papers, enclosed, Mr.N.Subramaniyan, learned counsel for the appellant submitted that service tax demanded for various works vide notice dated 30.01.2017 has been paid, but reimbursement has not been made by the State Government. Page Nos. 102 to 108 of the typed set of papers, evidencing payment of service tax to government, are reproduced.

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS
ASSESSEE CODE	AABFN3313QST001
LOCATION CODE	630402

NAME	NANDHINI CONSTRUCTIONS		
COMMISSIONERATE CODE	63		
DIVISION CODE	04		
RANGE CODE	02		
MAJOR HEAD	0044-SERVICE TAX		
ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES	291200
	00441493	SWACHH BHARAT CESS	10400
AMOUNT IN RUPEES	RS.301600		
AMOUNT IN WORDS	RUPEES THREE LAKHS ONE THOUSAND SIX HUNDRED ONLY		
	BSR CODE 0270626	CHEQUE TENDER DATE 06/02/2017	CHALLAN NO. 50660
TRANSACTION ID	816641		
DATE OF REALIZATION	06/02/2017		
MODE OF PAYMENT	E-PAYMENT		

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS
ASSESSEE CODE	AABFN3313QST001
LOCATION CODE	630402
COMMISSIONERATE CODE	63
DIVISION CODE	04
RANGE CODE	02
MAJOR HEAD	0044-SERVICE TAX

ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES-OTHERS RECEIPTS	59742
AMOUNT IN RUPEES	RS.59742		
AMOUNT IN WORDS	RUPEES FIFTY NINE THOUSANDS SEVEN HUNDRED AND FORTY TWO ONLY		
	BSR CODE 0270626	CHEQUE TENDER DATE 28/02/2017	CHALLAN NO. 50150
TRANSACTION ID	656696		
DATE OF REALIZATION	28/02/2017		
MODE OF PAYMENT	E-PAYMENT		

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS		
ASSESSEE CODE	AABFN3313QST001		
LOCATION CODE	630402		
COMMISSIONERATE CODE	63		
DIVISION CODE	04		
RANGE CODE	02		
MAJOR HEAD	0044-SERVICE TAX		
ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES	149581
	00441493	SWACHH BHARAT CESS	5342

AMOUNT IN RUPEES	RS.154923		
AMOUNT IN WORDS	RUPEES ONE LAKH FIFTY FOUR THOUSANDS NINE HUNDRED AND TWENTY THREE ONLY		
	BSR CODE 0270626	CHEQUE TENDER DATE 28/02/2017	CHALLAN NO. 50141
TRANSACTION ID	655873		
DATE OF REALIZATION	28/02/2017		
MODE OF PAYMENT	E-PAYMENT		

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS		
ASSESSEE CODE	AABFN3313QST001		
LOCATION CODE	630402		
COMMISSIONERATE CODE	63		
DIVISION CODE	04		
RANGE CODE	02		
MAJOR HEAD	0044-SERVICE TAX		
ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES-OTHERS RECEIPTS	32928
AMOUNT IN RUPEES	RS.32928		
AMOUNT IN WORDS	RUPEES THIRTY TWO THOUSANDS NINE HUNDRED AND TWENTY EIGHT ONLY		

	BSR CODE 0270626	CHEQUE TENDER DATE 03/03/2017	CHALLAN NO. 50259
TRANSACTION ID	781759		
DATE OF REALIZATION	03/03/2017		
MODE OF PAYMENT	E-PAYMENT		

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS		
ASSESSEE CODE	AABFN3313QST001		
LOCATION CODE	630402		
COMMISSIONERATE CODE	63		
DIVISION CODE	04		
RANGE CODE	02		
MAJOR HEAD	0044-SERVICE TAX		
ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES	349496
	00441493	SWACHH BHARAT CESS	12482
AMOUNT IN RUPEES	RS.361978		
AMOUNT IN WORDS	RUPEES THREE LAKHS SIXTY ONE THOUSANDS NINE HUNDRED AND SEVENTY EIGHT ONLY		
	BSR CODE 0270626	CHEQUE TENDER DATE 21/02/2017	CHALLAN NO. 50058

TRANSACTION ID	890539
DATE OF REALIZATION	21/02/2017
MODE OF PAYMENT	E-PAYMENT

Indian Overseas Bank
Payment of Indirect Tax - Cyber Receipt

NAME	NANDHINI CONSTRUCTIONS		
ASSESSEE CODE	AABFN3313QST001		
LOCATION CODE	630402		
COMMISSIONERATE CODE	63		
DIVISION CODE	04		
RANGE CODE	02		
MAJOR HEAD	0044-SERVICE TAX		
ACCOUNTING CODE	ACCOUNTING CODE	ACCOUNTING DESCRIPTION	AMOUNT
	00440410	WORKS CONTRACT SERVICES-OTHERS RECEIPTS	75272
AMOUNT IN RUPEES	RS.75272		
AMOUNT IN WORDS	RUPEES THREE LAKHS ONE THOUSAND SIX HUNDRED ONLY		
	BSR CODE 0270626	CHEQUE TENDER DATE 03/03/2017	CHALLAN NO. 50256
TRANSACTION ID	781613		
DATE OF REALIZATION	03/03/2017		
MODE OF PAYMENT	E-PAYMENT		

11. It is the specific case of the appellant that service tax was not collected from Government / TNHB and that sovereign functions of the State are not liable to tax. When service tax was not included in tender notification and collected, appellant

is constrained to challenge the very notification itself, on the ground that appellant need not collect service tax and pay to 1st respondent and thereafter to get reimbursed from State / TNHB.

12. Though, Mr.Rajinish Pathiyil, learned counsel for the 1st respondent submitted that notice dated 30.01.2017, has not been challenged and made objections, for interference, at the interim state, contention of the appellant herein that service tax was never collected from Government / Tamil Nadu Housing Board, has not been disputed. On the other hand service tax is paid by the appellant and reimbursement is sought for. If any amount has already been collected, then the appellant cannot retain, but to pay to the 1st respondent. But, in the case on hand, no service tax was collected, but the appellant is compelled to pay and thereafter, to get the same reimbursed. Appellant need not be mulcted with liability to pay service tax, which they have not collected from the Government / Tamilnadu Housing Board, and consequently, to pay the same to 1st respondent. Intention not to collect service tax from government for sovereign functions, is the main issue and that is why exemption has been granted earlier.

13. In the light of the above discussion, we are of the view that appellant has made out a prima facie case for interference with the order made in WMP No.1486 of 2018 in WP No.1185 of 2018 dated 28.03.2018. Hence, order impugned is set aside. Appellant is entitled for an order of interim injunction. Though on 20.03.2018 writ court directed the respondents to file counter by four weeks, so far, no counter affidavit has been filed. It is open to the parties to seek for an early disposal of the writ petition.

14. Writ Appeal is allowed, accordingly. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

ars
To

1.The Secretary,
Government of India,
Ministry of Finance, New Delhi.

2. The Superintendent of Central Excise,
   Erode-II Range, 81,
   Bharathinagar, Soolai, Erode - 638 004.

3. The Deputy Commissioner,
   GST & Central Excise, Audit Circle,
   Salem, No.1, Foulkes Compound,
   Anaimedu, Salem - 636 001.

4. The Secretary,
   Government of Tamilnadu,
   Finance Department,
   Secretariat, Chennai-9.

5. The Chief Engineer-in-Chief
   (Buildings & Chief Engineer
   (Building) Chennai Region
   & Chief Engineer General),
   Public Works Department,
   Chepauk, Chennai - 5.

6. The Chief Engineer (PWD),
   Technical Education Centre,
   Guindy, Chennai-25.

7. The Superintending Engineer (PWD),
   Buildings (C&M) Circle, Vellore-1.

8. The Superintending Engineer (PWD),
   Buildings (C&M) Circle, Trichy-1

9. The Executive Engineer (PWD),
   Technical Education Division, Tirunelveli.

10. The Executive Engineer (PWD),
   Technical Education Division,
   Railway Station Road, Thanjavur.

11. The Executive Engineer (PWD),
    Buildings (C&M) Division, Villupuram.

12. The Executive Engineer (PWD),
    Buildings (C&M) Division,
    Court Campus, Nagapattinam - 1.

13. The Executive Engineer (PWD),
    Water Resources Department,
    Bhavanisagar Dam, Coimbatore.

14. The Estate Officer,
    Tamilnadu Fisheries University,
    1st Line Beach Road, Nagapattinam-1.

15. The Financial Officer,
    Tamilnadu Fisheries University,
    1st Line Beach Road, Nagapattinam-1

+1cc to Mr.M.Subramanian, Advocate SR.No.30244
+1cc to Government Pleader SR.No.30701

W.A.No.756 of 2018

MG(CO)
GN(01/06/2018)