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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.11.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)No.1370 of 2018
and
WMP(MD)No.1453 of 2018

The Commissioner,
Kadayanallur Municipality,
Kadayanallur,
Tirunelveli District. ... Petitioner

Vs.

1. The Assistant Commissioner,
   O/o.The Assistant Commissioner of
   CGST & Central Excise,
   Tirunelveli Division,
   No.2/1, Nehru Nagar,
   STC College Road, Near Jeba Garden,
   Perumalpuram, Tirunelveli – 627 007.

2. The Superintendent of CGST and C.Ex,
   O/o.the Superintendent of Central Goods
   and Service Tax and Central Excise,
   Tenkasi Range, No.1A & 1 B,
   Coutralam Main Road,
   Nannagaram, Melagaram Post,
   Tenkasi – 627 818.

3. The Branch Manager, State Bank of India,
   Mangala Sundari Theatre Complex,
   Tenkasi Madurai National Highway,
   Kadayanallur, Tirunelveli District. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice issued by the first respondent in C.No.IV/16/23/2017-TECH (Arrears), dated 05.01.2018, quash the same.

For Petitioner : Mr.T.Bashyam

For Respondents : Mr.P.Vijayakarthikeyan
for R1 and R2

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Mr.Pala Ramasamy for R3

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ORDER

The petitioner is a local authority. The petitioner is owning immovable properties and is letting them out on rent. Since "renting of immovable property services" is a taxable service, the first respondent issued show cause notice and passed assessment order dated 30.11.2013 calling upon the petitioner to pay a sum of Rs.3,21,807/- for the period from 01.06.2007 to 31.03.2011. The petitioner municipality preferred an appeal before the Commissioner (Appeals). But, the same was dismissed on 26.08.2014 as time barred.

2.The specific contention of the learned Standing Counsel for the department is that the assessment order has become final and liability of the petitioner has also become final. The challenge in the present writ petition is only to the consequential recovery proceedings. This Court posed a specific question to the learned counsel appearing for the writ petitioner as to whether there is any interim order in respect of the parent order. The learned counsel is not in a position to confirm that there is any interim order against the respondent in this regard. Therefore, there cannot be a challenge to the consequential recovery proceedings.

3.The learned standing counsel appearing for the department also drew the attention of this Court to the decision of the Hon'ble Division Bench of the Allahabath High Court reported in 2017 (6) G.S.T.L. 370 (All) (N.K.Bhasin vs. Union of India) in which it was held that the provisions, namely, Section 65(105)(zzzz) and Section 66 of the Finance Act, 1994 and as amended by the Finance Act, 2010 are intra vires the Constitution of India.

4.The learned counsel appearing for the writ petitioner pointed out that the issue is presently pending before the Hon'ble Supreme Court and that the Hon'ble Supreme Court has directed that coercive steps shall be taken for recovery of arrears of service tax due on or before 30th September 2011 and that there is no stay of imposition of service tax insofar as the future liability towards service tax with effect from 1st October 2011. This order dated 14.10.2011 made Special Leave Civil Appeal No.27636/2011 pertains to an individual litigant and therefore, it cannot operate as a general stay order in respect of the measures taken for recovery of arrears of service tax due for a period upto 30.09.2011.

5.With these observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(W)

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Sub Assistant Registrar(IV)

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To

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   O/o.The Assistant Commissioner of
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3. The Branch Manager, State Bank of India,
   Mangala Sundari Theatre Complex,
   Tenkasi Madurai National Highway,
   Kadayanallur, Tirunelveli District.

+1cc to Mr.Pala Ramasamy,Advocate Sr.No.96128
+1cc to Mr.P.Vijayakarthikeyan, Advocate Sr.No.95871

SKM

KM/BK/SAR4/07.12.2018/3P/6C

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