IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2019

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The Honourable DR.JUSTICE ANITA SUMANTH

WP. No.1749 of 2019
& W.M.P.No.1951 of 2019

M/s.Pratibha Industries Limited,
Universal Majestic, 14th Floor,
P.L.Lokhande Mar,
Off, Eastern Express Highway,
Ghatkopar Mankhurd Link Road,
Opp.R.B.K.International School,
Govandi, Mumbai-400 043 ... Petitioner

/Vs/

1. Directore General of GST Intelligence,
Mumbai Zonal Unit,
NTC House, 3rd Floor,
No.15, N.M.Road, Ballard Estate
Mumbai-400 001
2. Tamilnadu Water Supply and Drainage Board,
Rep.by its Chairman & Managing Direcot
No.31, Kamarajar Salai, Chepauk
Chennai-600005
3. The Chief Engineer,
TWAD Board,
No.37, 1st Floor,
Medical College Road, Eashwari Nagar
Thanjavur 613004
4. The Executive Engineering
TWAD Board, RWS Division,
No.23, Kajamalai, J.K.Nagar,
Trichy-620023
5. Paradigm Tunnelling Private Limited,
Rep.by its Director, Mr.Anish Mohan
Having its office at
Unit No.301 Floor No.3, Sai Arcade,
N SRoad Mulund West Mumbai
Mumbai City,
Maharasthra-400080 ...Respondent

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the records culminating in the impugned notice bearing Letter No.F.No.DGGSI/

MZU/I&IS'B'/12(3)60/2017/5568 dated 25.09.2018 on the file of the 1st respondent and quash the same and all further proceedings consequential thereto and direct the respondents 2 to 4 to make payments of the amounts payable and becoming payable in pursuance of the Agreement No.CE/TNJ/ No.09/2016-17 dated 15.03.2017.

For Petitioner : Mr.Hari Radhakrishnan for Mr.P.Suresh

For Respondents : Mr.V.Sundareswaran Standing Counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for Mr.P.Suresh, learned counsel for the petitioner and Mr.Sundareswarn, learned counsel for the respondents.

2. The writ petitioner seeks issuance of a writ of certiorarified mandamus calling for the records culminating in impugned Notice dated 25.09.2018 issued by the Director General of GST, the 1st respondent herein and quash of the same.

3. The impugned notice issued in terms of Section 87 of the Finance Act 1994, to the Chief Accounts Officer of the Tamil Nadu Water Supply and Drainage Board, calls upon the Board to remit any amounts becoming payable to the petitioner forthwith to the Central Government by way of credit to the Central Government Account. The premise on which the aforesaid impugned notice has been issued is that there are arrears of service tax payable by the petitioner that would justify the recovery action taken.

4. Admittedly, no show cause notice has been issued calling for filing of objections and no assessment has been made on the petitioner quantifying the dues, if any, payable to the Department. The impugned notices have been issued solely on the strength of a statement recorded from the petitioner under Section 14 of the Central Excise Act, 1944, in the course of investigation conducted by the GST Department.

5. A counter has been filed by Mr.Sundareswaran, learned Panel Counsel, which clearly admits the position that the notice has not been preceded with a show cause notice and no assessment has been made upon the petitioner herein.

6. Both sides have made submissions on the merits of the matter in relation to the business of the petitioner and the arrangements entered into between the petitioner and 5th respondent, with which I am not concerned, since these are

matters to be taken into consideration by the Assessing Officer in accordance with law and after hearing the petitioner. Suffice it to say that the impugned notice is patently illegal and has been issued in gross violation of law and the principal of natural justice.

7. The provisions of Section 87 deal with the recovery of any dues to the Central Government and in the scheme of fiscal statutes recovery is always subsequent to the stage of framing of assessment and raising of a demand. The Department has, in the present case, clearly put the cart before the horse. I am thus of the categoric view that the impugned notice, is premature, to say the least, and in this view of the matter proceed to quash the same.

The writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

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4. The Executive Engineering
TWAD Board, RWS Division,
No.23, Kajamalai, J.K.Nagar,
Trichy-620023

+1cc to Mr.V.Sundareswaran, Advocate SR.No.28696

+1cc to Mr.P.Suresh, Advocate SR.No.28778

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VG II(CO)
GMY(24/04/2019)