IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P. No.8288 of 2019
and
W.M.P.Nos.8829 & 8831 of 2019

Shri V.Manikandaraju .. Petitioner

Vs.

1.Additional Commissioner,
Office of the Commissioner of Central Excise, Customs & Service Tax, No.6/7, A.T.D Street,
Race Course Road,
Coimbatore - 641 018.

2.The Assistant Commissioner of Central Goods & Service Tax,
Pollachi Division,
Jothi Nagar, 'D' Colony,
Pollachi 642 001.

3.M/s.Sri Kannan Departmental Store Private Limited,
20 Police Station Road,
Pollachi - 642 001. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the 1st Respondent herein in Order-in-Original in OIO SL.No.03/2017-ADC dated 05.01.2017 and quash the same and consequently direct the 2nd respondent to lift the attachment made in C.No.V/ST/15/16/2015-S.T.Adjn dated 16.11.2017.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel
for R1 & R2

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ORDER

The writ petitioner has challenged the order in OIO SL.No.03/2017-ADC, dated 05.01.2017, passed by the first respondent.

2.Heard, Mr.A.N.R.Jayaprathap, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior standing counsel for respondents 1 & 2.

3.By consent of both learned counsel, this writ petition is disposed of, even at the stage of admission. Though, Mr.Srinivas has not filed a counter, he states that he has received instructions from the office of the respondents and will proceed with the matter on the basis of the same.

4.At the threshold, I note that the impugned order is dated 05.01.2017 and as such, this writ petition is hit by laches. However, the learned counsel for the petitioner points out that the issue involved on merits relates to the levy of service tax on the Renting of Immovable Property. The litigation in regard to this issue has a chequered history. The decision of the Full Bench of the Delhi High Court upholding the virus of the provision levying tax on the service of Renting of immovable property in the case of Home Solutions Retail India Ltd. Vs. Union of India was challenged in Civil Appeal before the Supreme Court. Leave was granted on 16.03.2015 in C.C.Nos.4469 to 4470 of 2015 and an order of interim stay granted in respect of recovery of arrears of service tax, due on or before 30.09.2011. There is no stay of imposition of service tax for the subsequent periods. On 05.04.2018 the matter was listed for final hearing before the Supreme Court and has been referred to a Bench of nine judges in the case of Mineral Area Development Authority Vs. Steel Authority of India ((2011) 4 SCC 450). The period of assessment in the present case is 01.06.2007 to 30.06.2008 and 01.07.2008 to 31.01.2015.

5.It is also an admitted position that as regards the total arrears of Rs.38,14,620, computed as on 19.10.2010 a sum of Rs.24,35,280/- has been collected by the service tax department by way of attachment of rents paid by the 3rd respondent, the lessee in the property in question. The petitioner is an individual and states on affidavit filed in support of this writ petition that he is a farmer whose only source of income is from agriculture. The property in question has been rented out for both commercial as well as residential purposes.

6.In the light of the above discussion and bearing in mind the position that a substantial portion of the disputed demand

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has already been collected by the Revenue, I am inclined to permit the petitioner to file an appeal challenging the order-in-original in OIO SL.No.03/2017-ADC, dated 05.01.2017 before the Commissioner of Service Tax(Appeals). Such appeal, if filed by the petitioner within a period of two weeks from today along with the statutory pre-deposit, shall be received by the registry/office of the Commissioner of Service Tax(Appeals) without reference to limitation. It is made clear that the attachment of rents from the property in question shall continue subject to order, if any be passed by the Appellate Authority in this regard.

7.This writ petition is disposed of in the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

kmm/tsg

To

1.Additional Commissioner,
Office of the Commissioner of Central Excise, Customs & Service Tax, No.6/7, A.T.D Street,
Race Course Road,
Coimbatore - 641 018.

2.The Assistant Commissioner of Central Goods & Service Tax,
Pollachi Division,
Jothi Nagar, 'D' Colony,
Pollachi 642 001.

+1cc to Mr.ANR.Jayapratap, Advocate SR.No.33129

+1cc to Mr.AP.Sromovas, Advocate SR.No.32653

W.P. No.8288 of 2019
and
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