IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NO.19474 of 2018
and
WMP.No.22905 of 2018

GET Water Solutions Pvt. Ltd.,
Represented by Director Mr.Cyril Christanand Gubbi
No.1/134, Dhanakoti Raja Street,
Sundar Nagar, Ekkaduthangal,
Chennai 600 032. ... Petitioner

Vs.

Additional Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex,
Anna Salai, Nandanam,
Chennai-600 035. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the Respondent in proceedings Order in Original No.11/2017-ADC dated 27.12.2017 in C.No.V/15/93/2017-CS. Adj and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.M.Santhana Raman
Central Government Standing Counsel

ORDER

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.M.Santhana Raman, learned Central Government Standing Counsel for the respondent.

2.The petitioner undertakes contracts for Engineering, Procurement, Erection and Commissioning and Operation and

Maintenance of waste water treatment plants and common effluent treatment plants (CETP). The petitioner is registered with the Service Tax department under registration number STC AABCN1835EST001 under the category of 'Maintenance and Repair Service' for the levy of service tax under Finance Act, 1994.

3.According to the petitioner, Operation and Maintenance Services rendered to CETPs stood exempt from payment of service tax since the inception of Chapter-V of Finance Act, 1994. Notification No.25/2012-S.T. was issued on 20.06.2012 that provided for a slew of exemptions in regard to various services. The notification was issued in public interest and provided under S.No.13(d) for an exemption in regard to the services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration and operation of control units or waste water treatment plant, except if situated as part of a factory. There is no dispute in regard to the position that the CETPs in question are not located as part of factories.

4.There appearance to have been some confusion as to whether the service rendered in connection with operation and maintenance of CETP would also be covered by the exemption. Thus a clarification came to be issued vide Notification No.6/2015-S.T. dated 01.03.2015 where at clause-43, the Central Government has clarified that services rendered by operators of common effluent treatment plant by way of treatment of effluent, shall be exempt from the levy of service tax. In order to further clarify the matter Notification No.8/2017-S.T. was issued on 20.02.2017 reiterating specifically that the exemption granted from the levy of service tax on the services of operation of CETP was available even for the period between 01.07.2012 and 31.03.2015. This, to my mind clarifies the position that from 20.06.2012 till the inception of Goods and Service Tax on 01.07.2017, the services rendered by operators of CETP stands outside the ambit of levy of service tax.

5.A counter has been filed by the respondent, where there is no serious objection set forth to the entitlement of the petitioner to the exemption sought for, in law. The only objection taken is that the authority was justified in passing the impugned order in the light of the total non co-operation on the part of the petitioner to the adjudication proceedings. Not even a reply was filed to the show cause notice issued, not was there personal attendance.

6.However, an assessment has to be framed in accordance with law and application of all relevant notifications/circulars/ clarifications issued by the Board/Government. In this case, the eligibility to the exemption sought has not been denied by the department and rightly so. Thus, the defence that the assessment is correct in the light of the assessee non co-operation is not a defence at all, and is rejected.

7.In the light of the aforesaid discussion as well as the admitted position that the assessee is engaged in the operation and maintenance of CETPs that are not part of a factory, and in the light of Notifications 25/2012 (20.06.2012), 6/2015 (01.03.2015) and 8/2017 (20.02.2017), the petitioner is entitled to the exemption claimed. The impugned order of assessment in so far as it relates to the issue of service tax on operation and maintenance of CETPs is quashed.

8.Now coming to the assessment itself, since there appear to be other issues that have arisen in the assessment that are not covered by the writ petition, the respondent/department is directed to give effect to the present order by deleting the demand in relation to the activity of operation and maintenance of CETP alone as well as giving credit to any amounts been paid by the assessee, in relation to the aforesaid demand, after due verification of the same and after hearing the petitioner. The aforesaid exercise will be completed within a period of four weeks from date of receipt of a copy of this order.

9.The writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs/tsg
To

Additional Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex,Anna Salai, Nandanam,Chennai-600 035.

+1 cc to M/s.Joseph Prabhkar, Advocate, Sr.No. 40401

W.P.NO.19474 of 2018 and
WMP.No.22905 of 2018

KAN(CO)
CSL/20.06.2019