BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.5067 of 2019
and
W.M.P(MD)No.4042 of 2019

M/s.Sri Ganesh Windpower Engineers Private Limited,
No.7/1B1, Main Road,
Near Muppandal Temple,
Aralvaimozhi - 629 301,
Kanyakumari District,
Rep. by its Director S.Ramanathan ... Petitioner

Vs.

1.The Joint Commissioner of GST & Central Excise,
Tirunelveli Sub Commissionerate,
GST Bhavan, Tractor Road,
N.G.O - A Colony,
Tirunelveli - 627 007.

2.The Assistant Commissioner (ADJN),
Tirunelveli Sub Commissionerate,
GST Bhavan, Tractor Road,
N.G.O - A Colony,
Tirunelveli - 627 007.

3.The Superintendent of Central Excise and Service Tax,
Nagercoil Range, No.48/1-4-Sivaraj Building,
Tower Junction,
Nagercoil - 629 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, to direct the first respondent to pass fresh rectified orders in C.No.V/ST/15/51/2014-Adjn. dated 15.02.2019 relating to the period 2010-11 and 2011-12 by considering the representation for rectification letters filed by the petitioner, dated 28.12.2018 and 31.01.2019 Section 74 of the Finance Act, 1994, after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.B.Vijay Karthikeyan,
Central Government Standing Counsel.

ORDER

This Writ Petition assails order dated 15.02.2019, rejecting a petition for rectification of error filed by the petitioner on 28.12.2018.

2.The petitioner is an assessee to service tax having registered itself under the category of 'Erection, Commissioning and Installation Service', 'Management, Maintenance or Repair Services', 'Commercial or Industrial Construction Service', 'Works Contract Service' and 'Goods Transport Service'.

3.The second respondent passed an order of assessment in terms of the Finance Act, 1994 under which service tax is levied on 03.01.2015 for the period from April, 2010 to September, 2010 calling upon the assessee to remit a sum of Rs.3,45,217/- being interest for belated payment of Service Tax amounting to Rs.28,62,232/-. Even during the pendency of the proceedings, the assessee has made the payment on 08.10.2015 which position is taken note of in the Order-in-Original dated 03.01.2015. Penalty of a sum of Rs.5,000/- was imposed along with penalty of Rs.200/- per day in terms of Sections 76 and 77 of Finance Act, 1994. This order has become final.

4.Thereafter, the first respondent has passed another Order-in-Original dated 26.10.2017. This order relates to the period April 2010 to March 2011 and imposes interest for belated payments of Service Tax amounting to Rs.1,68,87,352/-, at a figure of Rs.24,14,613/-. While computing the demand, the Assessing Authority has given credit for a sum of Rs.1,50,000/- admittedly paid by the assesee on 17.10.2017 against the aforesaid demand.

5.The assessee was of the view that since it had admittedly remitted a sum of Rs.3,45,217/- on 08.10.2015 towards interest for the period April, 2010 to September, 2010 which period stands telescoped in the Order-in-Original, dated 26.10.2017, credit should have been given by the officer and such credit not having been given amounted to a mistake apparent on record.

6.A petition for Rectification of mistake was, thus, filed under Section 74 of the Finance Act, 1994. The assessee pointed out that the period April, 2010 to September 2010 has been the subject matter of assessment in both the first as well as the second Orders-in-Original and thus, credit for a sum of Rs.3,45,217/- should have been given, in arriving at the demand in the second Order-in-Original dated 26.10.2017.

7.In disposing the aforesaid Rectification application, the Assessing Authority has taken the stand that it was not brought to the notice of the adjudication officer that the amount of Rs.3,45,217/- was already paid and hence, the same would not constitute an error apparent on record.

8.This reasoning is not acceptable. The records of the assessing officer will reveal the payments of all amounts by the assessee in respect of a particular period. In fact the payment of Rs.3,45,217/- by the petitioner / assessee on 08.10.2015 has been recorded by the officer in proceedings dated 03.01.2015 and thus, is a part of record. In such circumstances, the reasoning adduced in the impugned order to reject the Rectification application is unsustainable.

9.The impugned order thus stands quashed. The assessing authority will give credit for all amounts remitted by the assessee including the amount of Rs.3,45,217/- and pass orders afresh upon Rectification applications dated 28.12.2018 and 31.01.2019 within a period of four weeks from date of receipt of a copy of this order, after hearing the petitioner / assessee.

10.This Writ Petition is allowed in the aforesaid terms. No costs. consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar

To

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3.The Superintendent of Central Excise and Service Tax,
Nagercoil Range, No.48/1-4-Sivaraj Building,
Tower Junction,
Nagercoil - 629 001.

+1 CC to M/s.C.BACKTHACIRONMONY, Advocate (SR-67702[F] dated 10/06/2019)
+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-67624[F] dated 10/06/2019)

W.P(MD)No.5067 of 2019
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PS
JM/31.07.2019/3P-6C