BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.6152 of 2019
and W.M.P.(MD)Nos.4909 and 4910 of 2019

M/s.ABS and Company,
Represented by its Managing Partner
A.Balasubramanian ... Petitioner

Vs.

1.The Executive Engineer,
Public Works Department,
Buildings (C & M),
Thanjavur,
Thanjavur District.

2.The Assistant Commissioner of GST & Central Excise,
Central Excise Division,
Thanjavur - 613 007.
Thanjavur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari calling for the records on the file of the second respondent in its impugned proceedings made in C.No.V/ST/15/32/2016-St.Adjn. Order No.41/2018-ST dated 06.12.2018 quash the same.

For Petitioner	:	Mr.S.Mahalakshmi
For Respondents	:	Mr.A.Thiagarajan Government Advocate

O R D E R

The petitioner is a firm and was awarded certain contracts by the first respondent, the Executive Engineer, Public Works Department. The petitioner, as service provider, is liable to register itself under the provisions of the Finance Act, 1994 in terms of which service tax is levied, file statutory returns and remit the dues in relation to the services rendered.

2. A show cause notice appears to have been issued on 04.06.2018 calling upon the petitioner to show cause why action not be taken for non-payment of service tax liability of an amount of Rs.43,53,427/-. The show cause notice clearly states that the petitioner had rendered service to the Public Works Department in Thanjavur and had received a sum of Rs.58,95,227/- for the period

from 01.04.2015 to 31.08.2016. However, it had neither registered itself, filed returns or paid amounts, statutorily payable.

3. In response, the petitioner appeared for the personal hearing and stated as follows in reply:

> *''I have appeared for personal hearing before the Assistant Commissioner on 26.11.2018 at 12.45 p.m. According to discussion made with the Assistant Commissioner, I am herewith submitting the followings:-*
>
> *1.I have to take old records, such as agreement made with the department and the details of payments received for each work done with PWD. After that I have to work out the liability of service tax due to be paid by us.*
>
> *2.Moreover we have not received any service tax amount from the department for executing the work. Works Contractor's Association people planned to meet the PWD minister and the departmental Chief Engineer, PWD for claiming the service tax amount from the department itself.*
>
> *3.We are executing the contract work for a minimum percentage of profit, sometimes for the loss also. In this stage we are not in a position to pay the service tax amount from our hand. Immediately after getting the amount from the PWD, we will pay the amount.*
>
> *4.We want to make the kind attention of you that except Thanjavur District no other District officers have not taken any steps regarding the service tax due from the works contractors. This is the reason for the delay in approaching the PWD Minister.*
>
> *So kindly we request you to give the time till that date of claim received from the department and also we request you to not to take any steps for the recovery of service tax on us".*

4. Thus, the only ground taken by the petitioner at the time of personal hearing and argued even before this Court is, while admitting liability under the Act, service tax will be remitted upon receiving the amounts from the Public Works Department. This is the only reason set forth in reply, to justify non-payment of the statutory dues.

5. It is in the abovesaid circumstances that the impugned order of assessment has come to be passed.

6. Learned counsel for the petitioner places reliance upon a decision of a Division Bench of this Court in W.A(MD)No.768 of 2018 dated 24.04.2018 *in Nandhini Constructions Vs. the Government of*

India rep by its Secretary, Ministry of Finance, New Delhi and 14 others and a decision of the Gujarat High Court at Ahmedabad in *Rajat Pharmachem Ltd., Vs. Union of India* particularly ((2017) 52 STR 480) paragraph Nos 5.1 and 5.4. In the case of *Nandhini Constructions* [supra], the petitioner therein contested the levy of service tax *per se*, whereas in the case on hand, the petitioner does not dispute such liability but only seeks some time to defray the same. In the latter case, the proceedings impugned were ordered to be kept in abeyance in the light of the bar imposed by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1984. This is not the factual matrix before me. Thus, both decisions are distinguishable on facts and in law and do not advance the case of the petitioner.

7.In the light of the aforesaid discussion, this writ petition is dismissed as not maintainable. However, the petitioner is permitted to file an appeal, if so advised, before the first appellate authority and if such appeal is filed within a period of two weeks from today, the same shall be taken on file by the Commissioner of Service Tax (Appeals) without reference to limitation. It is made clear that all contentions on merits are left open to be raised and pursued before the appellate authority and nothing contained in this order shall stand in the way of the same.

8. In fine, this writ petition is dismissed. No costs. Consequently, connected W.M.P(MD) Nos.4909 and 4910 of 2019 are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

CM

To,
1.The Executive Engineer,
Public Works Department, Buildings (C & M),
Thanjavur, Thanjavur District.

2.The Assistant Commissioner of GST & Central Excise,
Central Excise Division,
Thanjavur - 613 007, Thanjavur District.

3.The Appellate Authority/The Appellate Deputy Commissioner (GST Appeal), Trichy, Camp is at Tanjavur.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.68848

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13.06.2019

pm(CO)
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