IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.08.2020

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.15490 of 2015

Tiruttani Municipality
Rep by its Commissioner,
Tiruttani …Petitioner

Vs.

The Assistant Commissioner of Central Excise,
Ranipet-Division
SIPCOT Industrial Complex,
Ranipet-632 403 …Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to forthwith refund the entire sum of Rs.13,33,056 appropriated from the Bank Account of the petitioner-Municipality to within such time.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.B.Rabu Manohar

O R D E R

Today, the matter is listed through Video Conferencing. By consent of both the parties, the Writ Petition is taken up for final disposal.

2. The petitioner herein is a Municipality. In connection with non-payment of service tax on renting

of Immovable Property Service, a demand was made through a show cause notice dated 22.10.2013, which culminated into the Order-in-Original dated 28.10.2014.

3. The petitioner herein claims to have filed an appeal before the Commissioner of Central Excise (Appeals) on 07.01.2015 and the fact of the appeal having been presented was brought to the notice of the respondent on 02.03.2015. However, the respondent had recovered all the arrears of service tax excluding sales tax on 02.03.2015.

4. The learned counsel for the petitioner relies upon a circular of the Department of Revenue, Government of India, dated 16.09.2014 and submitted that as against the Order-in-Original, having preferred the appeal on 07.01.2015 and in view of Clause 4.2 of this circular, the respondent is not empowered to take coercive measures for the recovery of the service tax, pending the appeal.

5. Mr.B.Rabu Manohar, learned counsel for the respondent would submit that the pendency of the appeal was not brought to their notice on the date of recovery and as such, there is no infirmity in the recovery. He would further rely on the decision of this Court that in identical circumstances, when the recovery action of similar service tax dues came to the challenged before this Court, this Court had taken into consideration that the amount was already recovered and thereby directed the Appellate Authority to dispose of the appeal within a stipulated time. As such, he would submit that similar orders can also be passed in the present case.

6. A perusal of the records before this Court reveals that the petitioner had brought to the notice of the respondent about the pendency of the appeal on 02.03.2015 and incidentally, the recovery of the arrears of service tax was also made on 02.03.2015 itself. Hence, there is a possibility that the respondent was not aware of the pendency of the appeal and therefore, their action in recovering the service

tax amount cannot be strictly found fault with. However, in view of the circular dated 16.09.2014, since the petitioner had already preferred the appeal and also that recovery of the Tax has already been made, I am inclined to follow the decision rendered by this Court dated 17.03.2015 passed in W.P.Nos.5452, 5453, 5667, 5668, 5669, 5727 & 6396 of 2015, by directing the Appellate Authority to expedite the appeal. As such, the petitioner's interest also could be protected.

7. In the light of the above observations, the Writ Petition stands disposed of, with a direction to the Commissioner of Central Excise (Appeals), Chennai, to dispose of the petitioner's appeal, challenged against the Order-in-Original No.15/2014 dated 28.10.2014, as expeditiously as possible, in any event, within a period of 30 days from the date of receipt of copy of this order. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner of Central Excise,
Ranipet-Division
SIPCOT Industrial Complex,
Ranipet-632 403

2.The Commissioner of Central Excise(Appeals)
Chennai
+1cc to Mr.P.Srinivas, Advocate, Sr.No.28632

W.P.No.15490 of 2015

SPD(CO)
GS(19/10/2020)