IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 32274 of 2015
and
M.P. No. 1 of 2015

M/s. Navasakthi Township Developers
Private Limited,
represented by its Managing Director
K.I. Manirathinam,
East Coast Road (Puducherry-Cuddalore Road),
Periyakattupalayam Village,
Ariyanuppam Post,
Puducherry - 605 007. ... Petitioner

Vs

The Commissioner of Central
Excise & Service Tax,
Post Box No.104,
Gouber Avenue, Puducherry - 605 001. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the case in impugned order in Original No.19 & 20/2015 (ST) (C)//C.No.V/ST/15/103/2013-ST.ADJ, dated 07.07.2015 passed by the Respondent and to quash the said order in Original passed by the Respondent.

For Petitioner : Mr. T. Ramesh
For Respondent : Mr. V. Sundareswaran
Senior Panel Counsel for C & E

ORDER

This writ petition has been filed by the Petitioner, praying for the issuance of Writ of Certiorari, to call for the records of the case in impugned Order in Original No.19 & 20/2015 (ST) (C)//C.No.V/ST/15/103/2013-ST.ADJ, dated 07.07.2015 passed by the Respondent and to quash the said Order in Original passed by the Respondent.

2. The Petitioner is aggrieved by the impugned order dated 07.07.2015 passed by the Commissioner of Central Excise and Service Tax, Pondicherry, the Respondent herein. The impugned order has been passed pursuant to the following two Show Cause Notices issued to the Petitioner.

Show Cause Notice (Date)	Period	W.P. No
29.03.2014	23.07.2010 to 31.12.2012	32274 of 2015 (present Writ Petition)
20.05.2014	2012-2013	32274 of 2015 (present Writ Petition)

3. It is submitted that the Petitioner has challenged the vires of Section 65 (91a) read with Section 65 (30a) of the Finance Act, 1994 vide in W.P. No. 23618 of 2013. It is noticed that the Petitioner had earlier also filed a writ petition in respect of another Show Cause Notice bearing S.C.N. No. 56 of 2012 in W.P. No. 23556 of 2013. By an order dated 23.08.2013, this Court granted interim stay and thereafter by an order dated 19.07.2017 in W.P. No. 18354 of 2017, the said writ petition was dismissed with the following observation:-

> "4. The learned counsel appearing for the petitioner would submit that the definition of construction of residential complex cannot be applied to the construction of individual house and the petitioner having constructed only a single dwelling unit and no building was constructed with more than one single dwelling unit and the construction of new houses for each individual having single dwelling unit having not been disputed by the respondent, the definition of construction of residential complex would not apply to the petitioner's case and therefore, the impugned order is not sustainable. In this regard, the learned counsel has referred to certain clauses in the agreement for development.
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> 5. Apart from that, it is submitted that the petitioner has filed a writ petition seeking declaratory relief before this Court stating that the nature of activity done by the petitioner would not attract service tax. However, there is no interim order in the said writ petition, but as of now, the said writ petition has virtually become infructuous since the proceedings were initiated and it has culminated in an order demanding service tax.

6. Apart from the above two contentions, the learned counsel also stated that the show cause notice is barred by the limitation and the extended period of limitation cannot be invoked in the facts and circumstances of the present case. All the three contentions raised by the petitioner are factual. The question as to whether the building put up by the petitioner falls within the definition of construction of residential complex is purely a question of fact. That apart, the question of limitation also is not purely a question of law but a mixed question of fact and law. The challenge is with regard to invocation of extended period of limitation. This aspect has to be factually challenged by the petitioner. Thus, for all the above reasons, the writ petition cannot be maintained and the petitioner has to necessarily avail the alternate remedy of appeal provided under the Act.

7. For the above reasons, it is held that the writ petition is not maintainable and the same is dismissed leaving it open to the petitioner to approach the CESTAT, if so advised. No costs. Consequently, connected miscellaneous petition is closed."

4. It is noticed that the Petitioner has an alternate remedy before the Appellate Tribunal against the impugned order. Therefore, there is no merit in the present writ petition, even if the Petitioner succeeds in W.P. No. 18354of 2017, challenging the vires of the said provisions as the Petitioner would still be required to make submissions on merits.

5. That being the case, I am of the view that the Petitioner should be allowed to file statutory appeal before the Tribunal within a period of three months from the date of receipt of a copy of this order. It is needless to state that while filing the appeal, the Petitioner shall deposit 7.5% of tax along with the appeal. The writ Petition stands disposed with the above observation. If such an appeal is filed within the above period, the Tribunal is requested to take up the appeal on merits without reference to the question of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

To

The Commissioner of Central Excise & Service Tax,
Post Box No.104,
Gouber Avenue, Puducherry - 605 001.

+1 cc to Mr.T.Ramesh Advocate sr3627
+1 cc to Mr.V.Sundareeswaran Advocate sr3959

W.P. No. 32274 of 2015
and
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