IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.442 of 2020
and CMP No.6793 of 2020

V. Thangavel ... Petitioner

-vs-

1. Union of India,
   Rep by the Secretary,
   Ministry of Finance,
   Department of Revenue,
   Govt. of India,
   North Block, New Delhi - 110 001.

2. The Assistant Commissioner of Central Excise,
   Office of the Assistant Commissioner of Central Excise,
   Karaikal, Puducherry Union Territory.

3. The Superintendent of Central Excise,
   Tiruvarur Range,
   12-A, Karumari Koil Street,
   Tiruvarur. .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 17.09.2019 in W.P.No.3471 of 2011 on the file of this Court.

Prayer in WP.No.3471 of 2011:

Writ Petition filed to issue writ of certiorari to call for the recordss of the second respondent in C.No.IV/16/05/2010 S.Tax order in Original not appearing in person or by an Advocate.15/2010 (Service Tax) dated 27-09-2010 and connected order of corrigendum in No.IV/16/05/2010 and S.Tax dated 7-10-2010 and quash both as unconstitutional illegal

For Appellant : Mr.S. Rajesh

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant.

2. The contention raised is that the learned Single Judge dismissed the writ petition after its pendency for a very long time when the issue raised was a legal one viz., as to whether the appellant was liable for payment of any service tax which was the subject matter in dispute.

3. The Orders passed by the Assistant Commissioner of Central Excise and the Corrigendum relating thereto dated 27.09.2010 and 07.10.2020 were under challenge.

4. Learned counsel for the appellant contends that keeping in view the statutory provisions contained in Section 25 (b)(a) read with clause (d)(i) of Finance Act and further the clause 105 (zzq), the activity carried out by the appellant under the agreement did not relate to any commercial or industrial purpose with which the Tamil Nadu Civil Supplies Corporation was engaged and for this, learned counsel for the appellant also relied on the letter written by the Managing Director of Tamil Nadu Civil Supplies Corporation Ltd to the Deputy Commissioner, Central Excise and Service Tax dated 28.05.2010 and the same is extracted hereunder for ready reference:

"Dr.Veera Shanmuga Moni, IAS
Managing Director

Tamil Nadu Civil Supplies
Corporation Ltd,
12, Thambusamy Road,
Kilpauk, Chennai-600010

CE/C4/20482/2010 Date 28.05.2010

To

The Deputy Commissioner,
Central Excise & Service Tax,
Ponnagar,
Medical College Road,
Thanjavur-613 007

Sir,

Sub: TNCSC-Levy of service tax Contractors Engaged by TNCSC for Civil Construction in Thanjavur Division.

.....

This is with reference to the show cause notice issued to Thiru.S. Rajasekaran, Thanjavur, S. Shanmugasundaram Nagapattinam, S.Ravi, Thanjavur, V. Thangavel, Thiruvarur, M Shanmugam, Trichy, P. Nalankilli to pay service tax for the payment received in respect of construction undertaken in TNCSC Thanjavur Division.

Tamil Nadu Civil Supplies Corporation though registered under Companies Act, works on the principles of no profit and no loss. This Corporation is mainly created for procurement of paddy, pulses and distribution of essential commodities under public distribution system. It runs on State Government subsidy. To increase the storing capacity, the Central Government and its agencies are extending subsidy for various projects. Almost all Civil works undertaken in delta regions of Thanjavur, Nagapattinam and Tiruvarur regions of Thanjavur Division are either fully of partly met by funds provided by Central Government and its agencies. Therefore, it is basically a service oriented organisation and is not a Commercial one. In fact, the Government of India have now issued licence to this Corporation to register under Section 25 of the Companies Act ie., a Corporation functioning on no profit and no loss basis. Therefore it is requested that the points stated above may be taken into consideration and the demand for levying service on Contractors, who undertook civil construction works for TNCSC may please be withdrawn."

5. Thus, both on the legal provisions, as pointed out, coupled with the aforesaid supporting letter, it is urged that there is no occasion to levy service tax on the appellant and therefore, the orders passed by the Assistant Commissioner of Central Excise were erroneous and the writ petition ought to have been entertained.

6. We find that the learned Single Judge has dismissed the writ petition on the ground of alternative

remedy of an appeal being available against such orders. It is not disputed that the remedy of appeal was clearly available to the appellant, but, the learned counsel contends that since he has raised a jurisdictional issue viz., very levy of service tax itself, therefore, the writ petition was rightly filed and since it has taken a long time for this Court to hear the same, the writ petition could not be thrown on the ground of alternative remedy, for which, he also relies of certain principles of exception to alternative remedy as laid down by Apex Court.

7. Having considered the submissions raised, we find firstly that the writ petition ought to have been dismissed at the outset on account of availability of alternative remedy. However, there is nothing on record to indicate that the appellant himself was very much vigilant in getting his writ petition disposed of. Merely delay in taking up of the writ petition does not impell us to entertain the aforesaid arguments for the reason that even if the contention is that the appellant was not liable to service tax, it was a question of fact, which had to be determined on the strength of the contract agreement and the documents which have been relied on by the parties.

8. Therefore, we do not find any error in the approach of the learned Single Judge in allowing the appellant to seek the remedy of appeal, which has been extended to the appellant even after a lapse of such a long time by giving the benefit of limitation.

9. We do not propose to approve as to whether this course could have been adopted for extending the period of limitation or other wise, but even on merits, we are not satisfied about the nature of activities which is sought to be made the basis for raising a challenge to the orders.

10. The Tamil Nadu Civil Supplies Corporation, admittedly, is a Corporation registered under the Companies Act and is basically a Corporation for transacting food and civil supplies through various projects, where certain subsidies are also extended. In our opinion, merely because the Corporation is working on the principle of 'No profit No loss”” basis, the same cannot enure to the benefit of the appellant, who is a Contractor, extending his service as Contractor for the purpose of raising construction for the Corporation. The activity of the Corporation will have no impact on the claim of any such benefit under the provision aforesaid that has been pressed into service by the learned counsel for the appellant. The service rendered by the appellant and the activity of construction by the appellant

is not an activity of charity and is rather a contract for profit. The appellant is doing construction work not for any loss by raising constructions for the Corporation.

11. Accordingly, we do not find any merit in the appeal which is accordingly rejected. No costs. Consequently, connected CMP No.6793 of 2020 is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

sr

To

1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
Govt. of India,
North Block, New Delhi - 110 001.

2. The Assistant Commissioner of Central Excise,
Office of the Assistant Commissioner of Central Excise,
Karaikal, Puducherry Union Territory.

3. The Superintendent of Central Excise,
Tiruvarur Range,
12-A, Karumari Koil Street,
Tiruvarur.

W.A.No.442 of 2020

SS(CO)
CB(03/08/2020)