IN HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.39961 of 2015
and
M.P.No.1 of 2015

M/s. P. Subramani & Co.,
155 - Sakthi Nagar, Thindal,
Erode – 638 102.
Represented by
P. Subramani, Partner and Authorised Signatory.
...Petitioner

Vs.

The Commissioner of Central Excise,
No. 1, Foulks Compound,
Anai Road, Salem – 636 001. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records comprised in Order C.No.V/WCS/15/35/2013-ST.Adj dated 05.11.2015 on the file of the Respondent and quashing the same and consequently direct the Respondent to pass an amendment order rectifying the error apparent on the face of the record.

For Petitioner : Mr.S.Durairaj

For Respondent : Mr.Sundareswaran
Standing Counsel

O R D E R

Heard learned counsel for the petitioner and learned Standing Counsel for the respondent.

2. The petitioner is aggrieved by the impugned communication dated 05.11.2015 bearing reference C.No.V/WCS/15/35/2013-ST.Adj. By the impugned communication, the respondent has dismissed the application filed under Section 74 of the Finance Act, 1994 for rectification of Order-in-Original Sl.No.10/2015 (ST-Commissioner) on the ground that the order sought to be

rectified was elaborate and was passed after considering the replies furnished by the petitioner.

3. The petitioner provided works contracts service to Central Public Works Department for construction of quarters at Group Centre, CRPF, Avadi, renovation of Rashtriya Ispat Nigam Ltd's stockyard, civil works of pavements, culverts, main gates weigh bridge etc. and construction of office accommodation for State Trading Corporation (STC) Guindy. The petitioner also constructed Administrative Blocks for Gnanam School-AYS Parisutha Nadar Centenary Foundation.

4. Since the petitioner had failed to discharge service tax liability, an investigation was carried out by the Headquarters Preventive of the Department on various dates between 2012 and 2013 which culminated in the issue of Show Cause Notice dated 26.07.2013 and a Statement of Demand dated 19.05.2014, wherein a proposal was made to demand service tax on "works contract services" from the petitioner.

5. The petitioner replied to the above Show Cause Notice and Statement of Demand on 23.05.2014 and 17.06.2015 respectively. The petitioner also attended the hearing before the respondent. In their reply dated 23.05.2014, the petitioner admitted a tax liability of Rs.1,10,581/-. After the personal hearing was held on 17.06.2015, the petitioner submitted that they are entitled to exercise the option under Rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and agreed to pay tax at 4.12% for the projects covered by the Show Cause Notices. Accordingly the petitioner requested for reduction of tax liability.

6. Thereafter, the respondent Commissioner of Central Excise and Service Tax passed Order-in-Original No.10/2015 dated 02.07.2015 and confirmed the demand proposed in the Show Cause Notice and the Statement of Demand.

7. Accordingly the petitioner was called upon to pay a sum of Rs.96,94,904/- as the service tax due, interest under Section 75 of the Finance Act, 1994 and penalty under Sections 76, 77(2) and 78 of the Finance Act, 1994.

8. Instead of filing an appeal before the Customs and Excise Service Tax Appellate Tribunal, Chennai, the petitioner wrongly filed an application under Section 74 of the Finance Act, 1994 which has been rightly rejected by the respondent. The petitioner has fully managed to evade payment by filing the present Writ Petition and earlier by filing an application for

rectification even though both the applications for rectification and challenge to the order dismissing the application for rectification of the order were/are not maintainable.

9. The dispute pertains for the period between 01.04.2008 to 13.06.2012. The petitioner had managed to successfully evade payment of tax by taking advantage of the proceedings by not disclosing the tax liability. I find no merits in the present Writ Petition and therefore, the present Writ Petition is liable to be dismissed.

10. In fact the petitioner should have been put to terms at the time of admission of the Writ Petition and called upon to pay admitted liability as per their own undertaking on 17.06.2015, which also has not been paid.

11. Be that as it may, without expressing any further opinion on the merits of the case and the conduct of the petitioner, I am dismissing this Writ Petition with liberty to the petitioner to file a statutory appeal within a period of forty five days from the date of receipt of a copy of this order before the Customs and Excise Service Tax Appellate Tribunal, Chennai.

12. Petitioner is directed to pre-deposit the statutory minimum that has been prescribed along with the appeal in case the petitioner desires to file an appeal before the Customs and Excise Service Tax Appellate Tribunal, Chennai.

13. In case such appeal is filed, all recovery proceedings will be subject to the outcome of the said appeal. In case no such appeal is filed, the respondent is at liberty to initiate appropriate proceedings to recover the tax due from the petitioner.

14. The Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Central Excise,
No. 1, Foulks Compound,
Anai Road, Salem - 636 001.

+1cc to Mr.S.Durairaj, Advocate in SR.NO..7733

W.P.No.39961 of 2015
and M.P.No.1 of 2015

BS(CO)
RV(28/10/2020)