IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 38609 of 2016
and
W.M.P. No. 33070 of 2016

Salem Municipal Corporation,
Rep. by its Commissioner,
Salem - 636 001. ...Petitioner

-vs-

1. The Assistant Commissioner of Central Excise & Service Tax,
   Salem I Division,
   New Bus Stand,
   Salem - 636 004.

2. The Superintendent of Service Tax,
   Salem - II Range,
   Central Excise and Service Tax,
   Salem - 636 001.

3. The Secretary,
   Ministry of Finance,
   Department of Revenue,
   Central Board of Excise and Service Tax,
   North Block,
   New Delhi - 110 001.

4. The Manager,
   Indian Bank,
   Gugai,
   Salem - 636 006. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the connected records of the proceedings of the Second Respondent herein in his order dated 24.03.2016 made in O.C. No. 69/2016 in so far it relates to collecting the illegal penalty and interest for service tax and quash the same and consequently direct the First Respondent herein to allow the Petitioner Corporation to avail the Service Tax Voluntarily Compliance Encouragement Scheme, 2013, under the Finance Act, 1994 (as amended by the Finance Act, 2013) by refunding the sum of Rs. 1,78,158/- which is illegally collected from the Fourth Respondent as penalty and interest.

For Petitioner : M/s.S.Diwakar
For Respondent : Mr. S.Rajasekar,
Standing Counsel (for R1 to R3)
No appearance (for R4)

O R D E R
(through video conference)

Heard Mrs. K.Bhuvaneshwari, Learned Additional Government Pleader appearing for the Petitioner and Mr. S.Rajasekar, Learned Standing Counsel appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in O.C.No. 69 of 2016 dated 24.03.2016 passed by the Second Respondent in which the bank accounts of the Petitioner with the Fourth Respondent have been attached for the recovery of interest and penalty for service tax due in terms of the Order - in - Original in C.No.V/15/RIS/28/2010 ST.Adj (Sl.No. 32/2011.Slm I Div.) dated 29.09.2011 passed by the First Respondent.

3. The case of the Petitioner is that it is entitled to the benefit of the Service Tax Voluntarily Compliance Encouragement Scheme, 2013, which has been provided in Section 106(1) of the Finance Act, 2013 (hereinafter referred to as the 'Act' for short) and in that event, the recovery of interest and penalty for Service Tax as claimed in the impugned order would not arise.

4. It is brought to the notice of this Court by the Learned Counsel for the First to Third Respondents that the determination of Service Tax due from the Petitioner under Section 73(2) of the Act has been made in the Order-in-Original in C.No.V/15/RIS/28/2010 ST.Adj (Sl.No. 32/2011.Slm I Div.) dated 29.09.2011 passed by the First Respondent and that the benefits of the Service Tax Voluntarily Compliance Encouragement Scheme, 2013, as per Section 106(1) of the Act, would not be available when such order has been passed before 01.03.2013, as in this case. It is also contended that inasmuch as the Order-in-Original in C.No.V/15/RIS/28/2010 ST.Adj (Sl.No. 32/2011.Slm I Div.) dated 29.09.2011 passed by the First Respondent has attained finality in the absence of any challenge thereto, the consequential action for recovery in the impugned order cannot be stalled.

5. Having regard to the aforesaid submissions made by the First to Third Respondents, which deserves acceptance, none of the reliefs sought by the Petitioner in this Writ Petition can be granted. That apart, no infirmity has been shown in the impugned order requiring interference by this Court in the

exercise of discretionary powers of judicial review under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. The Assistant Commissioner of Central Excise & Service Tax,
   Salem I Division,
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   Salem - 636 004.

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   Central Excise and Service Tax,
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SJ(CO)
KKV/03/12/2020