BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.09.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.7559 & 7637 of 2015, 3410 of 2016, 3184, 3774, 5004, 14771 & 22695 of 2018
and
M.P(MD)No.1 of 2015 & WMP(MD)Nos.3008 of 2016, 3342, 3343, 3903, 3904, 4989, 13321, 20588 & 20589 of 2018

Madurai Corporation Rep by Commissioner,
Thiru. C.Kathiravan I.A.S., Arignar Anna Maligai,
Tallakulam Madurai-625 002.
... Petitioner in WP(MD). 7559/ 2015

- Vs. -

The Commissioner of Central Excise,
No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai-625 002.
... Respondent in WP(MD). 7559/ 2015

Prayer in WP(MD). 7559/ 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records of the 1st respondent in order in original NO.MAD-CEX-000-COM-004-11-2014 dated 24.11.2014 in file No.V/ST/15/01/2011-Adjn and quash the same.

For Petitioner : Mr.Joseph Prabhakar
For Respondent : Mr.R.Aravindan

The Commissioner
Dindigul Corporation, Dindigul
... Petitioner in WP(MD). 7637/ 2015

- Vs. -

1. The Commissioner Of Central Excise,
Central Revenue Buildings, Bibikulam, Madurai 625 002

2. The Assistant Commissioner Of Central Excise,
Dindigul I Division, Dindigul

3. The Superintendent Of Customs,
Central Excise & Service Tax, Dindigul Ii Range, 5/75,
Post Office Road, N.G.O. Colony,
Dindigul 624 005

4. The Chief Manager
State Bank of India, Main Branch,
Dindigul 624 001.
... Respondents in WP(MD). 7637/ 2015

Prayer in WP(MD). 7637/ 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any order or direction in the nature of Writ, calling for the records pertaining to the impugned order in C.No.IV/16/24/2014 STU dated 09.04.2015 on the file of the respondent No.2 and quash the same as illegal and consequently to direct the respondents 1 to 3 to refund the amount of Rs.82,20,883/- transferred from the bank account of the petitioner bearing Account No.10832668706 maintained with the respondent no.4 bank within time framed by this Honble court

For Petitioner : M/s.J.Lawrance
For Respondent : Mr.R.Aravindan for R1 to R3
Mr.Ananth C.Rajesh for R4

The Commissioner,
Dindigul Corporation, Dindigul.
... Petitioner in WP(MD). 3410/ 2016

- Vs. -
1. The Commissioner of Central Excise,
Central Revenue Buildings, Bibkulam, Madurai-625 002.

2. The Assistant Commissioner Of Central Excise,
Dindigul I Division, Dindigul.

3. The Superintendent of Customs Central Excise and Service Tax, Dindigul Ii Range, No.5/75, Post Office Road, N.G.O. Colony, Dindigul-624 005.
... Respondents in WP(MD). 3410/ 2016

Prayer in WP(MD). 3410/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records pertaining to the Impugned Notice in O.C. No.3324/2016 dated 08.01.2016 and O.C. No.175/2016 dated 29.01.2016 on the file of the Respondent No.3 and quash the same as illegal.

For Petitioner : M/s.J.Lawrance
For Respondent : Mr.R.Aravindan

The Commissioner,
Vickramasingapuram Municipality,
Tirunelveli District.
... Petitioner in WP(MD). 3184/ 2018

- Vs. -

The Asst.Commissioner Of Central Excise,
Tirunelveli Division.
... Respondent in WP(MD). 3184/ 2018

Prayer in WP(MD). 3184/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records relating to the impugned order passed by the respondent in C.No.V/ST/15/32/2012-STC dated 28/10/2014 and quash the same in so for as demanding the service tax.

For Petitioner : M/s.H.Arumugam
For Respondent : Mr.B.Vijay Karthikeyan

The Commissioner,
Colachel Municipality, Colachel,
Kanyakumari District.
... Petitioner in WP(MD). 3774/ 2018

- Vs. -

1. The Assistant Commissioner,
O/o.The Assistant of Central GST & central Excise,
Tirunelveli Division, 2/1, Nehru Nagar,
Stc College Road, Ngo A Colony, Tirunelveli-627 007.

2. The Superintendent of GST & Central Excise,
O/o.The Superintendent of GST & Central Excise,
Marthandam Range, 48/1-4-Sivaraj Building 1st Floor,
Tower Junction, Nagercoil-629 00

3. The Branch Manager, State Bank of India,
Colachel Town Branch, Opp.St.Marys Higher Secondary School,
Main Road, Colachel, Kanyakumari District.

4. The Branch Manager,
Indian Bank, Colachel Branch,St.Marys Primary School Building,
Port Street, Colachel, Kanyakumari District.
... Respondents in WP(MD). 3774/ 2018

Prayer in WP(MD). 3774/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records pertaining to the impugned order issued by the 1st respondent in C.NO.IV/16/23/2017-Tech(Arrears) dated 02/01/2018 and quash the same.

For Petitioner : M/s.P.Athimoola Pandian,
For Respondent : Mr.R.Aravindan for R1 & R2
Mr.C.Karthik for R3

The Commissioner,
Tiruvarur Municipality, Tiruvarur,
Tiruvarur District.
... Petitioner in WP(MD). 5004/ 2018

- Vs. -

1. The Joint Commissioner Of Central Exercise and Service Tax, Trichy.

2. The Assistant Commissioner Of GST & Central Excise,
Ponnagar, Medical College Road, Thanjavur-613 007.
... Respondents in WP(MD). 5004/ 2018

Prayer in WP(MD). 5004/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned order issued by the 2nd respondent in C.No.V/ST/15/14/2017-ST.Adj dated 03/01/2018 and quash the same .

For Petitioner : Mr.K.K.Ramakrishnan
For Respondent : Mr.R.Aravindan for R1 & R2

The Commissioner Thoothukudi Corporation,
Thoothukudi.
... Petitioner in WP(MD). 14771/ 2018

- Vs. -

The Assistant Commissioner Of Central Exercise,
Thoothukudi Division, C-50, Sipcot Industrial Complex,
Thoothukudi - 628 008
... Respondent in WP(MD). 14771/ 2018

Prayer in WP(MD). 14771/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling the impugned proceedings on the file of the respondent in C.No.IV/09/41/2011-STU dated 11.12.2017 and to quash the same as illegal and consequently directing the respondent not to claim penalty under section 78 of the Finance Act 1994 and interest under Section 75 of the Finance Act 1994 for the period 01.06.2007 to 31.03.2011.

For Petitioner : M/s.S.Saji Bino
For Respondent : Mr.B.Vijay Karthikeyan

The Madurai City Municipal Corporation,
Madurai, Rep.By the Commissioner.
... Petitioner in WP(MD). 22695/ 2018

- Vs. -

1. The Assistant Commissioner Of CGST and Central Excise,
Madurai II Division, Bibikulam, Madurai.

2. The Senior Manager,
Canara Bank, Madurai Corporation Branch, Madurai.
... Respondents in WP(MD). 22695/ 2018

Prayer in WP(MD). 22695/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the 1st respondent made in C.No.V / ST / 30 / 163 / 2018-ST dated 08/11/2018 and the consequential order of the 2nd respondent made in C.No.V / ST / 30 / 163 / 2018-ST dated 09/11/2018 and quash the same.

For Petitioner : M/s.K.Govindarajan
For Respondent : Mr.Vijay Karthikeyan for R1
Mr.C.Karthik for R2

COMMON ORDER

These writ petitions have been filed by various local bodies (Corporations/Municipalities). The adjudication orders levying service tax together with interest and penalty or recovery measures are under challenge in these writ petitions. Though the local bodies have been rendering “renting of immovable property service/mandap keeper service", they did not initially get themselves registered or pay the service tax for those services. That necessitated initiation of proceedings resulting in passing of the impugned orders. Questioning the same, these writ petitions have been filed.

2.The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions. Shri.Joseph Prabhakar the learned counsel for one of the petitioners led the arguments and also filed his written submissions. Since the stand of the respondents is that the petitioners are liable to pay service tax with effect from 01.07.2007 onwards, he would divide the period into two, viz, for the period from 01.07.2007 to 30.06.2012 and for the period from 01.07.2012 upto 30.06.2017 when GST was introduced. Section 66 of the Finance Act which is the charging Section refers to Section 65 (105) of the Finance Act, 1994. Section 65 (105) (zzzz) of the Act states that taxable service means service provided to any person by any other person in relation to renting of immovable property. According to the learned counsel for the petitioner, the term "person" will not include the local authority within its definitional sweep. Of course, the term person came to be defined in Section 65(B)(37) of the Finance Act with effect from 01.07.2012. By then, the scheme of taxation underwent a paradigm shift. Originally, specific categories of service were made taxable by defining each of them. From 01.07.2012, the negative list of services not taxable under the Act was introduced. All other services were to be taxed. Apart from the negative list contained in Section 66D of the Finance Act, 1994, the Government issued Mega Exemption Notification No.25/2012 dated 20.06.2012 providing exemption for various activities/services. Serial No.39 of the said notification was as follows :

> "39.Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution."

The term "governmental authority" was defined as follows :

> "governmental authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under Article 243 W of the Constitution."

3.The petitioners herein were admittedly discharging the functions entrusted under Article 243W of the Constitution of India. Obviously, they are governmental authorities. Therefore, they consequently qualify for exemption under Serial No.39 of the Mega Notification. The learned counsel relied on a catena of decisions in this regard. He would also state that the petitioners being local bodies cannot be imputed with any dishonest or fraudulent motives and that therefore, no penalty can be levied on them. Since the petitioners cannot also be charged with suppression, demand for the period beyond limitation cannot be sustained.

4.This Court heard the learned counsel for the petitioner at considerable length. Though I found the contentions to be worthy of consideration, as rightly pointed out by the learned standing counsel, the issue is no longer res integra. The Division Bench of the Madras High Court had already decided the issue in the decision reported in ***2014-TIOL-2545-HC-MAD-ST (G.V.Matheswaran vs. the Union of India and others).*** After upholding the validity of Section 65 (105)(zzzz) of the Act, in Paragraph No.56, the Hon'ble Division Bench observed that it is open to the local body to pass on the burden to the recipient of the service. It is necessary to note that among the petitioners in that batch of writ petitions, there were a few local bodies also. That is why, in ***R.Nambi vs. Tenkasi Municipality (2015) (37) S.T.R 696 (Mad.)***, a learned Judge of this Court observed as follows :

> "13.At the out set it has to be pointed out that the petitioner it not a service provider. The first respondent Municipality is the service provider, who has been registered with the Department. The onus is on the first respondent Municipality to remit the service tax. In turn, the first respondent Municipality has demanded the same from the petitioner, who is their licensee in respect of four contracts, wherein the petitioner has been given license to collect fees. Furthermore, the petitioner has not challenged the validity of the provisions of the Finance Act nor the notification issued by the second respondent and in such circumstances a challenge to a demand notice issued by the service provider under whom the petitioner is a licensee has to necessarily fail. Nevertheless, since this Court heard the learned counsel for the petitioner in great length, this Court proposes to consider the submissions made by the parties as regards the jurisdiction to levy the service tax.
>
> 14.Renting of immovable property was brought under the Act with effect from 01.06.2007. Section 65(105) (zzzz) defines taxable service, which means any service provided to any person by any other person by renting of immovable property or any other service in relation to such renting for use in the course of or for furtherance of, business or commerce and it includes vacant land given on lease or license and the test is as to whether it is used in the course of or furtherance of business of commerce. Admittedly, the petitioner is a licensee of the first respondent Municipality and the property has been used in the course of business or commerce. As noticed above, Section 65(90a) defines renting of immovable property including renting, letting, leasing, licensing

or other similar arrangements of immovable property for use in the course or furtherance of business or commerce.

15.Admittedly, the properties in question do not fall within the two exemptions provided under Section 65 (90a) of the Act. Explanation 2 under Section 65(90a) makes it more clear that renting of immovable property includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property. The duty performed by the first respondent Municipality would clearly fall within the ambit of the provisions referred above and therefore they have been remitting service tax to the Department. Further, Section 66D(a)(iv) of the Act deals with negative list of services and Clause (a) provides services by Government or a local authority excluding the following services to the extent they are not covered elsewhere and the relevant clause would be Clause (iv) namely support services, other than services covered under Clauses (i) to (iii), provided to business entities. Therefore, the Municipality is bound to pay service tax on the nature of transaction, which they have entered into with the petitioner."

5.When the Division Bench of the Madras High Court has already held that the local bodies are also liable to pay service tax for rendering "renting of immovable properties" service/mandap keeper services etc., then, it is not for me to go into the issue once again. Judicial discipline demands that I respectfully follow these binding precedents.

6.Having noted that the petitioners are liable to pay service tax, the further question that arises is whether the impugned demand are hit by limitation. Admittedly, the petitioners did not register with the respondent department immediately. From the date of registration as an assessee, the petitioner is liable to pay service tax. If limitation is computed, the impugned demands are well within time. The contention of the petitioner's counsel is that the respondents can fall back on the extended limitation only if the case can be said to fall under the proviso to sub-section (1) of Section 73 of the Finance Act. The said proviso reads as under :

"Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously ref6unded by reason of -

(a) fraud; or
(b) collusion ; or
(c) wilful mis-statement; or
(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words (thirty months), the words “five years' had been substituted.”

The learned counsel for the petitioners would argue that since the assessees happen to be local bodies, none of the aforesaid circumstances can be invoked against them.

7.I am not in a position to agree with the said contention. As rightly pointed out by the learned standing counsel, this issue had been specifically dealt with by the Division Bench of the High Court of Judicature of Chhattisgarh in the decision reported in ***2019 (31) GSTL 10 (Chhattisgarh) (Pawan Engineering Works vs. Commissioner of Customs, Central Excise & S.T, Raipur***). Paragraph No.10 of the said decision reads as under :

> “10.The contention of the appellant is that the extended period of 'five years' is not applicable to the instant case, as it does not come within the purview of specific Clauses at 'a, b, c, d and e'. This aspect has been considered by the Tribunal and it has been clearly held in paragraph 17 that non-registration of the appellant, in the given circumstances, definitely will amount to suppression of the relevant facts, which came to the notice of the Department, only later, on the basis of some intelligence gathered by the Preventive Officers of the Central Excise. This being the position, it squarely comes within the purview of 'sub-Clause (d)' under the proviso to Section 73(1) of the Finance Act, 1994 and hence it was open for the Department to have invoked the extended period of 'five years' for issuing the show cause notice. We are of the view that the finding rendered by the Tribunal is well supported by the reasoning and hence it warrants no interference.”

Adopting the very same reasoning, I hold that the impugned demands are within limitation.

8.Of course, I must sustain the contention of the petitioners that Tribunals throughout India have taken the view that penalty ought not to be levied on the local bodies. For instance, CESTAT, South Zonal Bench, Chennai in ST/40756-40757/2017 (CCE, Tirunelveli *vs.* M/s.Colachel Municipality) dated 25.07.2017, had noted that the earlier appeals of the revenue against the orders of the Commissioner (Appeals) involving the issue of non-imposition of penalty were rejected by the Tribunal. The reason for waiver was that no government body can be imputed with the intent to commit fraud or collusion to defraud revenue. Since the local bodies are discharging statutory obligation by way of providing public service without any profit making intent and amount so collected is eventually spent for the welfare of the public, there cannot be any malafide intention to evade payment of service tax. It is for this reason, the Tribunals throughout India have been taking a consistent stand in directing waiver of penalty. The respondent authorities are bound by the view taken by the jurisdictional Tribunal. Therefore, levying of penalty on the local body is clearly not warranted and they are accordingly set aside.

9.In the result, I hold as follows :

(a) The petitioner are liable to pay service tax as demanded by the respondents together with interest.

(b) The demands raised by the respondents are within time, and

(c) The imposition of penalty on the petitioners is set aside.

The writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Commissioner Of Central Excise,
Central Revenue Buildings, Bibikulam, Madurai 625 002

2. The Assistant Commissioner Of Central Excise,
Dindigul I Division, Dindigul

3. The Superintendent Of Customs,
Central Excise & Service Tax, Dindigul II Range, 5/75,
Post Office Road, N.G.O. Colony,
Dindigul 624 005

4. The Chief Manager
State Bank of India, Main Branch,
Dindigul 624 001.

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6. The Assistant Commissioner,
O/o.The Assistant of Central GST & central Excise,
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O/o.The Superintendent of GST & Central Excise,
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Ponnagar, Medical College Road, Thanjavur-613 007.

12. The Assistant Commissioner Of Central Exercise,
Thoothukudi Division,
C-50, Sipcot Industrial Complex,
Thoothukudi - 628 008

13. The Assistant Commissioner Of Cgst and Central Excise,
Madurai II Division, Bibikulam, Madurai.

14. The Senior Manager,
Canara Bank, Madurai Corporation Branch, Madurai.

+2 CC to Mr.J.LAWRANCE, Advocate SR.No.16541 & 16542
+2 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate
SR.No.16544 & 16545
+1 CC to Mr.K.GOVINDARAJAN, Advocate SR.No.16538

WP(MD)Nos.7559 & 7637 of 2015,
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SSS(CO)
TR(15.04.2021) 11P 20C