IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2021

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WRIT PETITION NO.10998 OF 2021
&
W.M.P.NO.11642 OF 2021

M/s.Coastal Energen Pvt. Ltd.,
7th Floor, Buhari Towers,
5, Moores Road, Chennai - 600 006.

...Petitioner

Vs.

1.Union of India
through Secretary
Ministry of Finance (Department of Revenue)
No.137, North Block,
New Delhi - 110 001.

2.The Additional Director General of Goods and Service Tax Intelligence, Coimbatore Zonal Unit,
155-1, Lakshmanan Street,
Ukkadam, Coimbatore - 641 001.

3.The Additional Director General of Goods and Service Tax Intelligence (Adjudication), 9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug Parel, Mumbai,
Maharashtra - 400 012.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of Certiorari, to quash the impugned show cause notice No.64/2020 - ST dated 30 December, 2020 issued by the second respondent as being ex-facie, illegal, unlawful and without jurisdiction constituting plain infringement of Article 14 of the Constitution of India.

For Petitioner : Mr.B.Kumar,
Senior Counsel
for Mr.Mayank Jain

For R1 to R3 : Mr.Rajendran Raghavan
Standing Counsel

ORDER

The petitioner is engaged in the operation of 600 Mega Watts Coal powered thermal plant located at Tuticorin, Tamil Nadu from where the electricity generated is supplied to TANGEDCO in terms of Electricity Act, 2003. The petitioner has also entered into Power Purchase agreement with the TANGEDCO on 19.12.2013. The sale of electricity by the petitioner to TANGEDCO consists of two components, one, Capacity Charges and the other, Energy Charges. Necessary Sales tax has also been paid on the sale of electricity.

2.While matters stood thus, a show cause notice was issued on 30.12.2020 by the respondents under the Finance Act, 1994 seeking inter alia demand service tax on the Capacity Charges and late payment fees as a declared service. Such notice is under challenge before this Court.

3.Mr.B.Kumar, learned Senior counsel would submit that the show cause notice itself is without jurisdiction and hence, the same is challenged before this Court. According to the learned Senior counsel, that respondent No.2 is not a Central Excise Officer in terms of Section 73 of the Finance Act. Further, the impugned notice has exceeded the territorial jurisdiction and also been issued without mandatory pre-consultation. Moreover, the notice is also against the law laid down by the Hon'ble Supreme Court.

4.Although the show cause notice was issued in December, 2020, the challenge is made only now. When this Court raised preliminary objections that how this Writ Petition is maintainable against the show cause notice, the learned Senior counsel would submit that in view of the notice suffering from jurisdictional error, any reply to the show cause notice would not serve any purpose. When the notice itself is without jurisdiction, the petitioner is not precluded from challenging the same before this Court.

5.This Court is unable to appreciate the argument for the reason that even the jurisdictional aspect can be canvassed before the Authority concerned and it is not necessary that such issue has to be dealt with by this Court directly. Whatever be the objections of the petitioner in regard to the maintainability of the show cause notice, nothing precludes the petitioner from agitating the same before the Authority.

6.It is always open to the petitioner to convince the Authority as to the invalidity of the show cause notice issued by him and in case the Authority passes any final and adverse order and in such event, it is open to the petitioner to challenge the final order in a manner known to law. But it is certainly not open to the petitioner herein to challenge the show cause notice even on the ground of challenge to the very jurisdiction of the authority who issued the notice.

7.This Court finds that number of grounds have been raised in respect of the challenge in the writ petition but this Court is not inclined to give any legal finding on the grounds raised in the writ petition for the present, as it is for the Authority to apply his mind to the legal objections raised on behalf of the petitioner.

8. In such circumstances, this Court is not inclined to entertain the writ petition and same is to be rejected as premature and accordingly the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

mrm

To

1.The Secretary
Union of India
Ministry of Finance (Department of Revenue)
No.137, North Block,
New Delhi - 110 001.

2.The Additional Director General of Goods and Service Tax
Intelligence, Coimbatore Zonal Unit,
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+2cc to Mr.Mayank Jain, Advocate, SR.No.27563

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MG(CO)
KKV/24/06/2021