

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 16.12.2020
PRONOUNCED ON : 22.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.16922 of 2020
and
W.M.P.No.20999 of 2020

I.Muthukumaran ... Petitioner

Vs

The District Manager,
TASMAC,
Thiruvavarur. ... Respondent

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records from the respondent pertaining to impugned penalty order Na. Ka. No.51/A1/ 2020 dated 30.07.2020.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.N.Damodharan, Standing Counsel

ORDER

This Writ Petition has been filed against the impugned order in Na. Ka. No.51/A1/ 2020 dated 30.07.2020 passed by the respondent in and by which, the respondent imposed penalty, interest and GST for the remittance of the shortage value in stock.

2. When this Writ Petition is taken up for consideration, the learned counsel appearing for the petitioner would submit that a learned single Judge of this Court, in a similar Writ Petition in W.P.No.10355 of 2020, has considered the identical impugned order and set aside the same. The learned Judge has passed a very detailed order after considering various citations placed by both sides. The relevant portion of the order as found in paragraphs 32 to 38, is extracted as under:

"32. The next question that arises for consideration is whether the penalty imposed in a disciplinary proceedings in a service matter is

liable for GST, in terms of Section 7(1) (d) or 7 (1~A) of the GST Act, 2017. Admittedly the said Section 7(1) (d) was not in force as on the date of passing the impugned order in the month of September 2020. The said Section was omitted with effect from 01.02.2019. The respondent, in his counter clearly stated that the notice of collection of GST was issued under Section 7(1) (d) alone. Therefore, without any provision/authority, the third respondent has issued the show cause notice to collect the GST, which is totally illegal.

33. Secondly, even assuming that Section 7(1A) of the Act r/w Rule 5(e) of the Rules will be applicable and the show cause notice was issued in accordance with the said provision, as contended by the learned counsel for the respondents, nowhere either in the show cause notice or in the impugned order or in the counter affidavit, the respondents never ever stated about the applicability of Section 7(1A) r/w Rule 5(e). It would be apposite to mention Section 7(1A), which reads as follows:-

-Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.-

34. By referring the above said Section, the respondents submitted that the petitioner refrained from performing to prevent the shortage of supply, so that they have imposed the penalty and as such it would attract the GST. This Court is not in a position to accept the present approach of the respondents due to the reason that the imposition of any GST will arise only when the penalty imposed in the course of trade or commerce. During the course of business, if any agreement was entered, where there is a delay in supply or in payment, if any, penalty imposed as per the agreement, such penalty comes under the purview of Section 7 (1A) for the imposition of GST. However, in the present case, the penalty imposed was in a disciplinary proceedings to an employee which would not attract GST.

35. In any angle, the imposition of the GST by the respondents, to the penalty imposed, under Rule 7(b) (xiv) of the Code, in a disciplinary proceedings initiated against the employees would not attract the GST and the penalty referred therein would only refer the penalty imposed in the course of trade or commerce.

36. As such in the present case the penalty was imposed in a disciplinary proceedings which cannot

be construed that the penalty imposed in the course of trade or commerce for the imposition of GST.

37.This Court finds substance in the arguments made by Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions in the batch and this Court recorded its appreciation for his assistance in the present writ petition.

38.Therefore, I am of the opinion that the GST imposed by the respondents is illegal on the face of it and the same is liable to be set aside."

3. The fact that the learned Judge has passed the final orders in respect of similar issue, has not been disputed by the learned standing counsel appearing for the Corporation.

4. Since the issue has already been dealt with and final order has been passed by the learned single Judge of this Court, whatever conclusion and finding reached by the learned Judge in the above said Writ Petition (MD) No.10355 of 2020 vide order dated 18.12.2020, will also hold good for the present Writ Petition also.

5. Accordingly, the present Writ Petition is allowed and the impugned order in Na. Ka.No.51/A1/2020 dated 30.07.2020 passed by the respondent is hereby set aside. Since the impugned order is set aside by this Court, the respondent shall proceed against the petitioner in accordance with law and the procedure as contemplated in the Code of Prevention and detection of Fraudulent acts in Tamil Nadu State Marketing Corporation 2014. No costs. Consequently, all connected WMPs are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sukTo

The District Manager,
TASMAC,Thiruvapur.

+lcc to Mr.P.Vijendran , Advocate SR.No. 10275

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A.SK(30.03.2021)