BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16629 of 2019
and
W.M.P.(MD)No.13262 of 2019

The Senior Regional Manager,
Tamilnadu Civil Supllies Corporation,
Thanjavur Region,
Sachidanatha Moopanar Road,
Thanjavur - 609001. ... Petitioner

Vs.

1.The Principal Chief Commissioner of
GST and Central Excise,
Chennai.

2.The Commissioner of GST and Central Excise,
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620001.

3.The Joint Commissioner of GST and Central Excise,
No.1, Williams Road,
Cantonment,
Tiruchirappalli - 620001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining the impugned orders passed by the 2nd respondent in Order in Original No.18/COMMR/ST/2019 dated 19.02.2019 and quash the same.

For Petitioner : Mr.M.Chellapandian, Senior Counsel,
For Mr.R.Vijayakumar.

For Respondents : Mr.K.Prabhu
Standing Counsel

ORDER

Heard the learned Additional Advocate General for the petitioner and the learned standing counsel for the respondents.

2.Tamil Nadu Civil Supplies Corporation is a State owned public sector undertaking registered under Section 25 of the Companies Act, 1956. Since production of foodgrains had increased and there were not enough godown facilities to store them, in order to increase the storage capacity of the corporation in addition to the available ones, it was proposed to construct additional godowns and to that effect, administrative and financial sanction was accorded by the Government of Tamil Nadu vide G.O.(Ms).No.119, Cooperation, Food and Consumer Protection Department, dated 05.11.2014.

3.Before issuance of the said Government Order, the Hon'ble Chief Minister had made a statement in this regard under Rule 110 of Tamil Nadu Legislative Assembly Rules on the floor of the assembly on 06.05.2013. In view of the same, the writ petitioner had entered into agreements with a number of contractors during the period November 2013 to November 2014.

4.The question that arises for my consideration was whether for the "works contract service" provided by those contractors, service tax was leviable. The assessing authority vide order 26.03.2018 held that service tax was leviable and called upon the petitioner/corporation to pay a sum of Rs.80,89,787/- with interest. Questioning the same, the petitioner/corporation filed an appeal before the appellate authority. The appellate authority vide order dated 09.01.2019 in Order-in-Appeal No.16/2019, set aside the order passed by the original adjudicating authority. In the said appellate order, it was specifically held that the activities carried out by the contractors in relation to construction of "Scientific Storage Godowns" of the corporation are exempted from the purview of service tax in terms of Serial No.12(a) of notification No.25/2012-ST, dated 20.06.2012. The implication was that service was provided by the contractors to governmental authority by way of construction of civil structure.

5.Before the appellate authority could pass the order, show cause notice dated 17.10.2018 came to be issued for non-payment of service tax on work contract service provided to the petitioner/corporation for the period from October 2015 to June 2017. The petitioner offered their objections. After hearing the petitioner, the second respondent herein/original adjudicating authority, passed the impugned order confirming the demand set out in the show cause notice. Questioning the same, this writ petition has been filed.

6.The respondents have filed a detailed counter affidavit. In the counter affidavit, the respondents had taken the following three fold stand:-

(a) The order impugned in the writ petition is appealable in nature and that a writ petition questioning the same is not maintainable.

(b) It is not open to the petitioner to place any reliance on the order dated 09.01.2019 made in Order and Appeal No.16/2019, since the respondents have already filed an appeal (ST/40546/2019) before the Tribunal and therefore, the Order and Appeal cannot be said to have attained finality.

(c) The exemption clause in the Mega Notification dated 20.06.2012 was withdrawn later and therefore, the appellate authority's order cannot govern the present proceeding.

7.I am not persuaded by any of the three submissions. As rightly urged by the learned Additional Advocate General, though clause No.12(a) was withdrawn from the Mega Exemption Notification, it was reintroduced vide notification No.6/2015, dated 01.03.2015 issued by the department of Revenue and Finance Ministry, Government of India. The withdrawal notice was issued on 01.03.2015 but it came into effect on 01.04.2015. Since there was still some ambiguity as regards the treatment of the subject matter for the period from 01.04.2015 to 01.03.2016, to deal with the same, Section 102 of the Finance Act, 2016 was brought in. Section 102(1) of the Finance Act, 2016 reads as follows:

"102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of--

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as--

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date."

8.Therefore, the second respondent clearly erred in proceeding on the premise that the exemption on which, the appellate order was predicated no longer held good. On this sole ground, the order impugned in the writ petition has to go. When the order suffers from a patent illegality, it is certainly open to the aggrieved party to invoke the writ jurisdiction of this Court.

9.I must of course deal with other contention raised by the learned standing counsel for the respondents that the order passed by the appellate authority has to be put to challenge before the Tribunal. I posed a question as to whether any interim order of stay has been obtained. It is fairly stated that the challenge is pending only at the appeal stage and that no interim order has been obtained. When the appellate order is holding good, the original adjudicating authority ought not to have passed an order at variance with the appellate order. On this ground also, the impugned order has to go.

10.The petitioner is a public sector undertaking. It is funded entirely by the Government. Even for the construction activities in question, the allocation was made only by the Government of Tamil Nadu. Such construction activities have been explicatively exempted by the Mega Exemption Notification issued on 20.06.2012. Of course, for a short duration, exemption was not available. But then, by a subsequent notification, the break in the exemption had also been bridged. Therefore, it should be held that the petitioner always was entitled to the benefit under Clause 12(a) of the mega exemption notification. Therefore, when the appellate order was to the benefit of the writ petitioner for the period upto October 2015, it was certainly not open to the original adjudicating authority to pass an order adverse to the petitioner for the period from October 2015. Looked at from any angle, the order impugned in the writ petition is not defensible. It stands quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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

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+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-12578[F] dated 19/03/2021)

W.P(MD)No.16629 of 2019
19.03.2021

TP(CO)
TR(08.04.2021) 5P 5C