BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)No.1311 of 2018
and
W.M.P(MD)No.1374 of 2018

M/s.Sri Ganesh Windpower Engineers Pvt Ltd,
7/1B1 Main Road, Aralvaimozhi Post,
Kanyakumari District - 629 301. ... Petitioner

Vs.

1.The Joint Commissioner of Central GST &
Central Excise,
Tractor Road, N.G.O. "A" Colony
Tirunelveli -627007.
2.The Commissioner of Central Excise &
Service Tax,
Central Revenue Building,
Tractor Road,
N.G.O. A road colony,
Tirunelvlei - 627 007. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the 1st respondent in C.No.V/ST/15/70/2015-Adjn, dated 31.07.2017 and quash the same.

For Petitioner : Mr.Karthik Ranganathan
For Respondent : Mr.P.Vijay Karthikeyan

O R D E R

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

2. The writ petitioner is liable to pay service tax. The petitioner had entered into contractual arrangement with Indian Rare Earths Limited [IREL]during 2010-13. According to the petitioner, they were only rendering the service of transportation of raw mineral sand. According to the petitioner they are liable to pay service tax only under the head of "GTA". They have been promptly filing their returns and also remitting tax on that basis. While so, the 2nd respondent herein issued show cause notice dated 19.08.2015 calling upon the petitioner to show cause as to why duty, interest and penalty should not be levied on them, because the petitioner had not paid service tax for having rendered the service of "site formation and clearance, excavation, earth moving and demolition" as defined in Section 65 of the Finance Act, 1994. The petitioner submitted a detailed reply and enquiry was also held. Notwithstanding the same, rejecting the stand of the petitioner, impugned order came to be passed levying duty, interest and penalty

on the petitioner herein. Questioning the same, the writ petition came to be field.

3.The respondents have filed a detailed counter affidavit and the learned standing counsel took me through its contents.

4.The learned Standing Counsel laid considerable emphasis on the subject column in the communication between the Indian Rare Earths Limited and the petitioner herein. He would point out that the authority had applied his mind. In any event, the impugned order is appealable and therefore, the writ petition deserves to be dismissed.

5.I considered the rival contentions and went through the materials on record.

6.The learned Counsel for the writ petitioner had raised three fold contentions.

a. the petitioner has been maintaining right from the inception that they are rendering only the service of transportation of raw mineral sand for IREL and that they have never engaged in site formation and clearance, excavation, earth moving and demolition;

b.The contractual arrangement between the petitioner and IREL ended during June 2013. Since the petitioner cannot be accused of having indulged in any misrepresentation, the department cannot invoke the extended period of limitation. The show cause notice having been issued on 19.08.2015 is squarely barred by limitation; and

c.The show cause notice was issued on 19.08.2015, but the impugned order came to be passed only on 31.07.2017.

7.The learned Counsel would rely on the relevant provisions of the Finance Act, which clearly state that the adjudication proceedings even in the extended period of limitation should be concluded within a period of one year from the date of issuance of the show cause notice. In as much as the impugned order was passed after a gap of almost two years from the date of issuance of the show cause notice after eleven months from the date of reply, the impugned order should be deemed bad in law.

8.Though the learned Counsel for the petitioner argued at length, I am of the view that the impugned order has to be set aside on a short ground.

9.The stand of the authority is that the petitioner was engaged in site excavation work. The stand of the petitioner is that the petitioner was engaged only in transportation work, for which they had already remitted necessary service tax. It is an admitted case of the department that the petitioner was rendering service only to IREL. IREL is a public sector undertaking. This divergence could have been easily resolved if in the adjudication process, the assessing authority had associated the concerned officials from IREL. Section 14 of the Central Excise Act is very much available to be invoked in such cases. The said provision confers powers to summon persons to give evidence and produce documents in inquires under the Act. Examination of the concerned official from IREL would have clarified the issue. It is not a matter that could be adjudicated by respondents themselves. Only IREL who entrusted the petitioner with the contract, could have placed the relevant materials. The petitioner might be treated as an interested person. But IREL is not so. Non association of IREL in the adjudication process has rendered the impugned order invalid. On this sole ground the impugned order is quashed.

10.The matter is remanded to the 2nd respondent, who shall summon the concerned IREL officials, cause them to produce all the relevant documents so as to find out nature of service rendered by the petitioner herein. All the contentions of the writ petition are left open.

11.The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

dsk

To:-

1.The Joint Commissioner of Central GST & Central Excise,
Tractor Road, N.G.O. "A" Colony
Tirunelveli -627007.

2.The Commissioner of Central Excise & Service Tax,
Tractor Road,
N.G.O. A colony,
Tirunelvlei – 627 007.

+1 CC to M/s.KARTHICK RANGANATHAN, Advocate (SR-13994[F] dated 26/03/2021)

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25.03.2021

GS (28.04.2021) 3P 4C