WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.82 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015
&
W.M.P.(MD)No.13089 of 2019

D.Sekar, Proprietor,
M/s.Sekar Constructions,
No.42, 7th Cross, Thillai Nagar,
Thiruchirappalli - 620 018. ...Petitioner

Vs.

1. The Commissioner(Appeals-II),
Office of the Commissioner of Customs & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner,
Central Excise & Service Tax,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001. ...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 proceedings, viz. the order in original bearing No.53/2013-ST dated 25.11.2013 of the second respondent herein and quash the same.

For Petitioner :Ms.AL.Gandhimathi
For Respondents :Mr.R.Aravindan

* * *

O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondents.

2. The petitioner had registered himself with the respondents on 23.11.2006 by holding out that he has been rendering "commercial or industrial construction services". The stand of the respondents is that the petitioner has been collecting service charges from his clients from the year 2005-06, but not filing returns or remitting the same with the Department. An investigation was undertaken and it was followed by issuance of show cause notice on 18.10.2011.The

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

petitioner submitted his written objections. Thereafter, the order-in-original was passed by the second respondent on 25.11.2013 levying tax and penalty on the petitioner. The petitioner did not file any appeal within time. He moved the appellate authority after expiry of the limitation period. The appellate authority by order dated 14.11.2014 held that the appeal was filed after a delay of 14 days. Since the appellate authority lacked the jurisdiction to condone the said delay, the appeal was rejected as timed barred. Questioning the same, this writ petition has been filed.

3.The order passed by the appellate authority cannot be obviously faulted. Therefore, the petitioner rightly confined challenge to the original order passed by the assessing authority.

4. The learned Standing counsel appearing for the respondents submitted that the writ petition is clearly not maintainable. In this regard, he placed reliance on the decision that the order of the Hon'ble Supreme Court reported in 2020 (36) GSTL 305(ACCT, LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Ltd.). Though the said objection is rather formidable, the recent decision of the Hon'ble Division Bench vide Order dated 18.02.2021 in W.A.No.493 of 2021 (Mahindra & Mahindra Ltd., V. The Joint Commissioner (CT)) comes to the rescue of the petitioner. The Hon'ble Division Bench in the said decision had held that the jurisdiction under Article 226 of the Constitution of India would be available if the order of the statutory authority is suffering from unfairness or unreasonableness or perverse or if there is violation of principles of natural justice.

5. The learned counsel appearing for the petitioner submitted that the impugned order is without jurisdiction. She would claim that as per the notification dated 08.09.2010 issued by the Central Board of Excise and Customs vide Notification No.48/2010-ST, the show cause notice will have to be issued only by the Additional Commissioner of Central Excise and not by the Joint Commissioner of Central Excise. In this case, notice to show cause dated 18.10.2011 was issued by the Joint Commissioner of Central Excise and Service Tax.

6. As rightly pointed out by the learned Standing Counsel, the Joint Commissioner of Central Excise and Service Tax will have the jurisdiction to adjudicate, if the amount of service tax is above Rs.5,00,000/- but not exceeding Rs.50,00,000/- and the Additional Commissioner of Central Excise and Service Tax will have the authority to adjudicate, if the amount of service tax is above Rs.20,00,000/- but not exceeding Rs.50,00,000/-. In this case, the adjudication order was passed only by the Additional Commissioner of Central Excise and Customs. In fact the amount involved in this case is Rs.37,00,000/-. In fact the Joint Commissioner himself could have adjudicated also. Therefore, the

https://hcservices.ecourts.gov.in/hcservices/

issuance of show cause notice is very much within his jurisdiction. I do not find any merit in the contention raised by the petitioner's counsel.

7. The petitioner's counsel draws my attention to the relevant recitals set out in the show cause notice. One can see therefrom that the petitioner's liability will arise only with effect from 01.06.2007 onwards. That is because, the respondents levied service tax on the petitioner on the ground that he is rendering erection, commissioning or installation works. According to the impugned order, the petitioner's liability commenced with effect from 01.04.2006 onwards. This is clearly incorrect. Therefore, to this extent, I am constrained to interfere with the impugned order.

8. The impugned order is liable to be quashed to the extent it levies service tax on the petitioner for the period from 01.04.2006 to 31.05.2007. Therefore, the order impugned in this writ petition is quashed to that extent. The respondents are directed to issue a revised order confining the liability of the petitioner for the period commencing from 01.06.2007 onwards.

9. The petitioner's liability commencing from 01.06.2007 is settled and the impugned order is quashed in so far as it imposes liability for the period prior to 01.06.2007. As regards the levy of penalty, it is well settled that this is quasi-criminal in nature and therefore, the said issue may also be revisited. The petitioner's counsel has already paid a sum of Rs.27,00,000/-. The same will be taken note of by the respondents while passing orders afresh.

10. This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

3**To:**

1.The Commissioner(Appeals-II),
Office of the Commissioner of Customs & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

2.The Additional Commissioner,
Central Excise & Service Tax,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-9534[F] dated 09/03/2021)

W.P.(MD)No.82 of 2015
08.03.2021

RP(17.05.2021) P 4C

https://hcservices.ecourts.gov.in/hcservices/