BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)No.22857 of 2019
and
W.M.P.(MD)No.19605 of 2019

Gemini Enterprises,
Rep. by its Proprietor,
Manickam. ... Petitioner

Vs.

1.The Chief Workshop Manager,
Southern Railway,
Ponmalai, Trichy.

2.The Works Manager/Wagon Production,
Southern Railway Central Workshop,
Ponmalai, Trichy.

3.The Deputy Finance Adviser – Cum-
Chief Account Officer,
Southern Railway, Ponmalai,
Trichy.

4.Tiruchirappalli G.S.T. and Central Excise Commissioner,
State Head Quarters Office of Wing,
No.1, Williams Road, Cantonment,
Trichy. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned letter issued by the 3rd respondent vide No.G-25/W/GOC/XII/GC dated 14.09.2019 and the consequential rejection order made by the 2nd respondent vide No.CW/WP/8150-WC/BLC Painting dated 18.09.2019 and quash the same as illegal and may consequently direct the respondents 1 to 3 to refund the withheld money of Rs.1,71,493/- to the petitioner along with 18% yearly interest within a specified period.

For Petitioner : Mr.T.Bashyam
For Mr.A.Balakrishnan.

For Respondent : Mr.S.Manohar for R1 to R3

Mrs.S.Ragavendhre for R4.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a contractor. He had carried out the work of painting 730 wagon belonging to Southern Railways. The grievance of the petitioner is that while settling the bill amount, the employer/Railways had deducted a sum of Rs.1,71,493/-. The stand of the petitioner is that such a deduction is illegal. The stand of the Railways is that they are under a statutory obligation to deduct the service tax. Therefore, this writ petition has been filed for directing the Southern Railways to release the withheld amount of Rs.1,71,493/- with interest.

3.The petitioner had rightly arrayed the Central Excise department also as the fourth respondent in the writ petition. Unfortunately, the counter filed by the fourth respondent does not shed any light. The stand of the fourth respondent is that since the details are not available, they are unable to take any stand on the liability of the petitioner to pay service tax.

4.Now that the fourth respondent has been apprised of the facts of the case, I direct the petitioner to submit a detailed representation to the fourth respondent immediately after receipt a copy of this order. The fourth respondent will decide on the petitioner's liability or otherwise within a period of four weeks after such a receipt. The fourth respondent will also intimate the first and third respondents about the decision taken by them. Based on the decision of the fourth respondent, the first and third respondents will either disburse the withheld amount to the petitioner or remit it to the service tax account of the department and issue appropriate receipt to the petitioner thereafter. The entire exercise will be concluded within the time line stipulated above. If the fourth respondent does not act on the petitioner's representation and remains silent, the first and third respondents are directed to disburse the withheld amount to the petitioner herein without any delay. Since the amount in question has been withheld pursuant to purported discharge of statutory obligations, the question of paying interest will not arise.

5.The writ petition is disposed of with these directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// 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.

+1 CC to M/s.S.MANOHAR, Advocate (SR-9884[F] dated 10/03/2021)

+1 CC to M/s.A.BALAKRISHNAN, Advocate (SR-9972[F] dated 10/03/2021)

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NA(CO)
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