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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8668 of 2017
and
W.M.P.(MD)No.6578 of 2017

The Regional Testing Laboratory,
Harbour Link Road,
Tuticorin - 628 001,
Represented through Senior Chemist,
Tuticorin. ... Petitioner

Vs.

1.The Customs, Excise and Service Tax,
Appellate Tribunal,
South Zonal Bench,
Haddows Road,
Chennai - 600 006.

2.The Commissioner of Central Excise (Appeals),
Lal Bahadur Shashtri Marg,
Central Revenue Buildings,
Madurai - 625 002.

3.The Assistant Commissioner of Central Excise,
Central Revenue Buildings,
C-50, SIPCOT Industrial Complex,
Tuticorin - 628 008. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned orders passed by the 3rd respondent in reference No.63/ST/2008 dated 17.12.2008 and modification order of the 2nd respondent in Appeal No.175/2010 dated 28.05.2010 and consequential order passed by the 1st respondent in Appeal No.ST/579/2010 dated 03.02.2017 and quash same.

For Petitioner : Mr.N.S.Karthikeyan

For Respondents : Mrs.S.Ragaventhre,
Junior Panel Standing Counsel.

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ORDER

Heard the learned counsel for writ petitioner and the learned standing counsel for the respondents.

2.The petitioner is coming under the direct control of the Industries and Commerce Department of the Government of Tamil Nadu. The petitioner's function is to do laboratory testing of chemicals and materials for MSME and Government departments. Whenever the samples are brought to the petitioner's laboratory, the petitioner has to conduct the test and issue test certificate. For doing the said work, the petitioner collects statutory charges for testing as per Government norms. The petitioner was not sure as to whether, they are liable to pay service tax. After the position was clarified, the petitioner duly registered themselves with the respondent on 14.10.2004 and thereafter, the petitioner has been remitting the service tax and also filing the necessary returns. Whileso, the third respondent issued show cause notice dated 02.04.2007, calling upon the petitioner to explain as to why, no service tax was remitted for the period from 01.07.2003 to 13.10.2004. The amount payable by the petitioner was quantified at Rs.68,275/-. The petitioner submitted their reply on 19.04.2007. After holding an enquiry, the third respondent passed the Order-in-Original No.63/ST/2008, dated 17.12.2008 confirming the demand of service tax of Rs.68,275/- and the petitioner was also directed to remit interest as well as penalty. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority by the impugned order gave partial relief to the petitioner by setting aside the penalty portion alone. Not satisfied with the same, the present writ petition has been filed.

3.The respondents have filed a detailed counter affidavit and the learned standing counsel took me through its contents. In paragraph No.8 of the counter affidavit, it has been specifically contended that any person aggrieved by the order passed by the Commissioner (Appeals) under Section 35A of the Central Excise Act may move the Tribunal. In the instant case, the appellate authority had given substantial relief to the petitioner by quashing the levy of penalty. According to the learned standing counsel, the impugned order does not call for any interference.

4.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner drew my attention to the order dated 22.03.2011 passed by the appellate authority in Appeal No.170 of 2010. In the said appeal, the regional testing laboratory, K.Pudur, Madurai, was the appellant. An identical demand was raised on the appellant therein also. The appellate authority allowed the appeal by setting out the reason in paragraph No.7.

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5.Paragraph No.7 of the said appellate order reads as follows:-

"7.*From the findings in the impugned order itself it is clear that their doubt was finally settled only by the Chief Commissioner of Central Excise, Chennai's C.No.IV/623/2007-CZO (ST) dated 16.03.2007 wherein it was stated that they were not entitled to be covered under the definition of 'Sovereign / Public Authority'. Though the appellants have got registered and started paying service tax from 01.10.2014 it becomes obvious that their non payment for the previous period was due to genuine doubts. Being an organization of the Government, evasion of tax would not have been a motive for such non payment. The only thing that can be held against them is that even after the clarification by the Chief Commissioner they were not forthcoming to pay up the tax due from 01.07.2003 to 30.09.2004. This also will be explained by the fact that they had not collected the Service Tad for the said period and in a Government agency it is understandable that diversion of funds from another head of account towards payment of taxes is not such an easy exercise. The department has come to know about the activities of the appellants in October 2004 itself, when they registered themselves for Service Tax. To wait up to 2008 for issue of a Show Cause Notice invoking the extended period, requires the mandatory elements of suppression, fraud, collusion, etc with an intent to evade payment of tax. Any one who intents to evade payment of tax would not have been seeking the clarifications of the department on the subject, as is evident from the Chennai Chief Commissioner's clarification issued in 2007. Thus the demand itself is hit by time bar and also penalties imposed in the impugned Order-in-Original are no longer valid."*

6.The contention of the learned counsel for the petitioner is that the petitioner is identically placed. The petitioner is also a regional testing laboratory. Therefore, whatever applied to the appellant therein would apply to the petitioner also. I sustain the said contention. The department obviously knew that the petitioner had not paid any tax for the period preceding October, 2004. Therefore, nothing stopped the department from issuing a show cause notice immediately thereafter. There was absolutely no justification in waiting till 02.04.2007 to issue the show cause notice. Therefore, it is obvious that the impugned proceedings are squarely hit by limitation. The reasons, which impelled the appellate authority to allow the appeal filed by the regional testing laboratory, K.Pudur, Madurai impel me to allow this writ petition also. In this view of the matter, the order impugned in the writ petition is set aside and the writ petition is allowed. No

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costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-14971 [F] dated 31/03/2021)

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RK (30.04.2021) 4P 2C

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