IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	22.12.2021
Pronounced On	16.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.15734 of 2020

M/s.Priya Constructions,
Rep.by its Proprietor V.S.Ramakrishnan
New No.13, Old No.7, Wason Street,
T.Nagar, Chennai 600 017. .. Petitioner

vs.

1.The Commissioner of GST @ Central Excise,
Chennai South Commissionerate,
No.692, MHU, Complex, Anna Salai,
Nandanam, Chennai 600 035.

2.The Assistant Commissioner
of GST @ Central Excise,
Chennai South Commissionerate,
Thyagaraja Nagar Division,
No.692, MHU Complex,
Anna Salai,Nandanam,
Chennai 600 035. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in C.No.IV/16/14/2020-R.F.Tech, dated 11.8.2020 passed by the 2nd respondent and to quash the same as without authority of law unsustainable and contrary to law and further direct the 2nd respondent to sanction interest forthwith on the amount of refund sanctioned viz.Rs.98,27,018/- which amount was paid by the petitioner between the period from 04.09.2008 and 1.3.2011, from the dates of payments till the date of actual refund.

For Petitioner : Mr.M.A.Mudimannan

For Respondents: Mr.Rajendran Raghavan
Senior Standing Counsel.

O R D E R

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

2. The petitioner has filed this writ petition for a Writ of Certiorarified Mandamus to call for the records of the impugned proceedings of the second respondent dated 11.8.2020 bearing reference C.No.IV/16/14/2020-R.F.Tech and for a direction to pay interest to the petitioner on the amount paid by the petitioner pending investigation.

3. The petitioner was rendering works contract during the period in dispute between 10.9.2004 and 31.10.2008. The said service became taxable from 1.6.2007. A statement was therefore recorded from the proprietor of the petitioner on 23.8.2008 pursuant to which, the petitioner also obtained service tax registration on 25.8.2008 under the category of "Construction of Residential Complex and Construction of Commercial or Industrial Complex Service" under the provisions of the Finance Act, 1994.

4. The petitioner was thereafter issued with a Show Cause Notice No.270/2009 dated 08.07.2009 for the period between 10.9.2004 and 21.8.2008. The Show Cause Notice called upon the petitioner to show cause as to why:

> " i) a sum of Rs.67,97,827/- (Rupees Sixty Seven lakhs ninety seven thousand and eight hundred and twenty seven only) being the Service Tax payable for the period from 10.09.2004 to 31.08.2008 as detailed in Annexure I and II to this notice should not be demanded from them under proviso to Section 73 (1) of Finance Act, 1994;
>
> ii) the amount of Rs.55,47,059/- (Rupees Fifty Five lakhs forty Seven Thousand and Fifty Nine only) paid by the assessee on various dates as detailed in Annexure III to this notice should not be appropriated against the demand above:
>
> iii) Interest at appropriate rate should not be demanded from them under Section 75 of the Act from the due date of payment till the date of actual payment of the amount demanded above:
>
> iv) The amount of Rs.1,56,549/- (Rupees One lakh Fifty six thousand five hundred and forty nine only) paid towards interest should not be appropriated against the interest demanded:

> v) Penalty under Sections 76 to 78 of the said Act, should not be imposed on them for the contravention of the Act and Rules mentioned above with an intention to evade payment of Service Tax.”.

5. The Show Cause Notice culminated in Order-in-Original No.02/2011 dated 27.01.2011 of the first respondent. The first respondent confirmed the demand proposed in the aforesaid show cause notice. Apart from the demand proposed in the above show cause notice, the Order in Original No.2/2011 dated 27.01.2011 also imposed penalty Rs.70,00,000/-(Rupees Seventy Lakhs only) on the petitioner.

6. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Customs, Excise and Service Tax Tribunal in S.T./257/2011. The said Appeal was eventually allowed by the Customs, Excise and Service Tribunal (CESTAT) vide its Final Order No.43018/2018 dated 22.11.2018 with consequential relief to the petitioner.

7. The Tribunal took note of the law laid down by the Hon'ble Supreme Court in M/s. L&T Limited vs. CCE 2015(39) STR 913 (SC) and also few other decisions of the Tribunal and allowed the aforesaid appeal filed by the petitioner.

8. Pursuant to the above order of the Tribunal, the 2nd respondent curiously sanctioned refund claim for a sum of Rs.98,27,018/- (Rupees Ninety Eight Lakhs Twenty Seven Thousand and Eighteen only) vide its Order-in-Original No.8/2019 dated 25.6.2019. However no interest was paid.

9. Under these circumstances, the petitioner requested the respondents to sanction interest at 6% on the amount deposited by the petitioner during the investigation prior to issue of the show cause notice.

10. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of Commissioner of Central Excise Chennai-II vs. UCAL Fuel System Ltd., 2014 (306) ELT 26 (Mad) and another decision of the Hon’ble Supreme Court in Commissioner of Customs (Import) Raigad vs. Finacord Chemicals (P) Limited, 2015 (319) E.L.T 616 (S.C).

11. It is not clear on what basis Refund Order No.8/2019 dated 25.6.2019 sanctioned a sum of Rs.98,27,018/- even though the amount that was paid by the petitioner pending investigation and before the issue of the said show Cause Notice was only for a sum of Rs.57,03,608/- [Rs.55,47,059/- towards tax and Rs 1,56,549/- towards interest].

12. Admittedly, only for the period after 1.6.2007 the petitioner was liable to pay service tax. A part of the demand proposing the show cause notice would also have been dropped.

13. The petitioner was liable to pay service tax for the period between 1.6.2007 and thereafter 31.10.2008 under the category of "works contract". The demand that was proposed and was confined only to Rs.67,97,827/-.

14. The department has also not preferred an appeal. Therefore to that extent the rights of the petitioner stand crystallised though wrongly.

15. The petitioner has not been paid interest separately on the amount that was deposited pending investigation. To that extent, the petitioner is entitled in interest at the rate of 6% on Rs.57,03,608/- [Rs.55,47,059/- towards tax and Rs.1,56,549/- towards interest] only.

16. The amount of tax which was paid by the petitioner for the subsequent period after 1.6.2007 could not have been refunded. However, curiously it appears to have also has been ordered to be refunded back. This would require a proper examination which fact is not forthcoming either from the petitioner or respondent.

17. Under these circumstances, I remit the case back to the second respondent to re-examine the issue and pay/adjust interest payable to the petitioner firm and out of the amount paid. If there was an erroneous refund of the tax paid for the period after 31.10.2008, the respondents are directed to take appropriate steps to recover the aforesaid amount from the petitioner.

18. This exercise shall be carried out by the second respondent within a period of six months from the date of

receipt of this order after issuing a proper show cause notice to the petitioner. In case, it is opined that there was indeed an erroneous refund of the amount vide Order in Original No.8/2019 dated 25/06/2019.

19. The writ petition is disposed with the above direction. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

rgm/kkd

To

1.The Commissioner of GST @ Central Excise,
Chennai South Commissionerate,
No.692, MHU, Complex, Anna Salai,
Nandanam, Chennai 600 035.

2.The Assistant Commissioner
of GST @ Central Excise,
Chennai South Commissionerate,
Thyagaraja Nagar Division,
No.692, MHU Complex,
Anna Salai,Nandanam,
Chennai 600 035.

+1cc to Mr.K.Jayachandran, Advocate SR.No.36001

W.P.No.15734 of 2020

KV(CO)
GMY(12/07/2022)