BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.3128 of 2018

and

W.M.P.(MD) No.3282 of 2018

K.Veerapathiran ... Petitioner

/vs./

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Nunkampakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Madurai

3. Arulmigu Kottai Mariamman Thirukovil.
Through its Executive Officer,
Dindigul.

4. The Managing Trustee,
Arulmigu Kottai Mariamman Devasthanam,
Dindigul. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned auction cum tender notice dated 25.01.2018 for 1427 pasazhi issued by the 4th respondent and to quash the condition imposed in the same, demanding the GST tax from Petitioner.

For Petitioner : M/s.V.Santhakumaresan

For R1 & R2 : Mr.P.T.Thiraviam
Government Advocate

For R3 & R4 : Mr.C.Gunaseelarupan

ORDER

The petitioner has challenged the impugned tender cum auction notice, dated 25.01.2018, insofar as the same demands GST from the petitioner on the tender bid and other successful bidders.

2.It is the specific case of the petitioner that he participated in the tender in connection with Masi Perunthiruvizha in the 4th respondent Temple between 15.02.2018 and 06.03.2018.

3.The learned counsel for the petitioner submits that auction was held on 06.02.2018 and in connection with the aforesaid auction, the petitioner had deposited Rs.1,00,000/-. It is further submitted that the petitioner was the successful bidder and quoted the highest amount of Rs.4,05,100/- for Stall No.C-5 for selling Delhi Appalam during Dindigul Arulmigu Kottai Mariamman Thirukovil Masi Perunthiruvizha. The petitioner also admits that he had paid the amount, though was not liable to pay a sum of Rs.80,000/- towards GST liability. It is submitted that under the provisions and the rules enumerated under the Central Goods and Services Tax Act, 2017, the respondents are under obligation to pay the necessary tax to be payable under the said Act. It is submitted that instead of paying the tax by themselves, the respondents were demanding it from the petitioner, which is contrary to the provisions of the respective Goods and Services Tax Act, 2017.

4.Opposing the prayer, the learned counsel for the respondents 3 and 4 would submit that the supply effected by the fourth respondent to the petitioner by auctioning the space for putting up Stalls for being used on a temporary basis by the petitioner between 15.02.2018 and 06.03.2018 in connection with the aforesaid Temple festival, was not exempted. The fourth respondent was liable to pay tax under the respective Goods and Services Tax Act and since such supply was an indirect tax, the respondents were passing on the incidence of such tax demanded the amount from the petitioner.

5.The learned counsel for the respondents 3 and 4 submits that the writ petition is not maintainable as the petitioner has paid a sum of Rs.4,05,100/- being the highest bidder. Apart from the above amount, the petitioner has also voluntarily paid a sum of Rs.80,000/- towards GST in terms of the tender condition in the Tender Notification, dated 25.01.2018, of the respondents. As per the tender notification, apart from the bid amount, the highest bidder was also required to pay the applicable tax and since GST is applicable tax for supply of service, namely, temporary lease of space to the petitioner at the temple premises, the 4th respondent was indeed liable to pay the tax and that the amount collected from the petitioner has also been remitted to the Government.

6.The learned counsel for the respondents 3 and 4 has aslo given a print out from the website of the Director General of Taxpayer Services Central Board of Exercise and Customs. Regarding GST on the Charitable and Religious Trust. Reference was made to Notification No.12 of 2017 and central tax (rate) dated 28.06.2017, which exempts only service provided by an entity registered under

Section 12 AA of the Income Tax Act, 1961 by way of Charitable Activities from whole of GST. Entry No.1 of notification specifies that service by an entity registered under Secttion 12 AA of the Income Tax Act, 1961, by way of charitable activity is exempt from whole of the GST. Entry No.1 GST notification reads as under:

> *(a) Entitites must be registered under Section 12 AA of the Income Tax,and*
>
> *(b) Such services or activities by the entity are by way of charitable activities.*

7.The petitioner was required to bear the incidence of GST as per the Tender Notification, which was not paid by the petitioner. It is further submitted that during the ensuing tender, the petitioner also participated and was required to pay the tender amount and the GST.

8.The learned Government Advocate for the respondents 1 and 2 affirmed that the petitioner has also filed another writ petition in W.P.(MD) No.23555 of 2018 for the tender held on 13.10.2018, where the petitioner was also asked to pay the GST amount. It is submitted that the exemption in Notification No.12/17 and Central Tax (Rate) dated 28.06.2017 will apply only for such activities of services by an entity, which are charitable in nature. It is submitted that while renting out the premises for commercial purpose, the activity of the 3rd and 4th respondent temple cannot be said to be a charitable activity and therefore, the GST amount was rightly collected. It is further submitted that the GST collected from the petitioner has also been deposited and paid on 10.01.2019 and therefore, it is submitted that there is no merits in the present writ petition.

9.I have considered the arguments advanced by the learned counsel for the petitioner, learned Government Advocate for the respondents 1 and 2 and the learned counsel for the respondents 3 and 4.

10.The tender conditions stipulate that applicable tax has to be paid by the petitioner. Whether the respondents 3 and 4 were exempted from payment of tax in terms of Notification No.12/17 and Central Tax (Rate) dated 28.06.2017 or not cannot be decided in a writ proceeding. Though *prima facie* it appears that the demand of service tax from the petitioner was correct, it would however require a proper adjudication by the authorities under the respective GST enactments. As a matter of fact, if the petitioner is of the view that the petitioner was not liable to pay tax, it is open for the petitioner to file appropriate application for refund of the incidence of tax paid under Section 54 of the respective enactments. Having participated in the tender, it is not open for the petitioner to state that the petitioner cannot be asked to pay tax, if indeed GST was payable by the 3rd and 4th respondent.

11.In ***State of Punjab and another Vs. Devan Modern Breweries Limited and another*** reported in ***(2004) 11 SCC 26***, the Hon'ble Supreme Court has further held that having participated in the tender, it is not open for the bidder to say that the condition of the tender cannot be imposed. The above ratio will apply to the facts of the present case. Therefore, there is no merits in the present writ petition. Only remedy available to the petitioner is to approach the authority concerned under Section 54 of the respective GST enactments for refund of the GST collected from the petitioner in accordance with law.

12.In the light of the above discussions, the writ petition is dismissed with liberty to the petitioner to approach the appropriate authorities under the respective GST enactments to workout the remedy. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (ADI)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

1.The Commissioner,
Hindu Religious and Charitable Endowment,
Nunkampakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Madurai

+1 CC to M/s.C.GUHASEELARUPAN, Advocate (SR-8250[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8341[F] dated 24/02/2022)

ORDER MADE IN
W.P.(MD)No.3128 of 2018
23.02.2022

PP(12.03.2022) 5P 5C