IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.32938 of 2022
and
W.M.P. No.32331 of 2022

St. Thomas Mount Cum Pallavaram
Cantonment Board,
Rep. by its Chief Executive Officer .. Petitioner

vs

The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex,
5th Floor,
Anna Salai,
Nandanam,
Chennai - 600 035. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to Order in Original No.20/2022-ST ADC, dated 30.09.2022 passed by the respondent and quash the same.

For Petitioner	:	Mr.Joseph Prabakar
For Respondent	:	Mr.V. Sundareswaran, Senior Panel counsel

ORDER

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.V. Sundareswaran, learned Senior Panel Counsel accepts notice for the respondent.

3. The grievance of the petitioner in this writ petition is that under the impugned order dated 30.09.2022 passed by the respondent, despite directions given by this Court in its order dated 10.08.2022 passed in W.P. Nos.28468 and 28080 of 2021 that the respondents will have to give due consideration to the order dated 22.03.2021 passed in ***W.P. No.8900 of 2017 in the case of Cuddalore Municipality Vs. The Joint Commissioner of GST and Central Excise***, the respondents have not given due consideration to the same and has passed the impugned order confirming that the petitioner is liable to pay the demand of Service Tax of Rs.57,55,656/- (ST : Rs.54,91,668/-, Edu Cess : Rs.20,851/-, She Cess : Rs.10,426/-, SBC : Rs.1,33,818/-, KKC : Rs.98,892/-)

4. The petitioner claims that as a Cantonment Board and being a Municipality they are exempted from paying Service Tax. The petitioner had earlier challenged the Show cause notice issued by the respondents

in W.P. Nos.28468 and 28080 of 2021.

5. A learned Single Judge of this Court by her common order dated 10.08.2022 disposed of the said writ petitions on the ground that at the stage of Show cause notice, writ petitions cannot be entertained. But, however the learned Single Judge has made it clear that the respondent will have to consider the decision rendered by another learned Single Judge of this Court in a batch of writ petitions in ***W.P. No.8900 of 2017 in the case of Cuddalore Municipality Vs. The Joint Commissioner of GST and Central Excise,*** before passing final orders.

6. However, the learned Senior Panel Counsel appearing for the respondent would submit that the order passed in the ***Cuddalore Municipality*** case referred to supra is the subject matter of challenge in a writ appeal. He would also submit that a contrary view has been taken by another learned single Judge of this Court in another batch of writ petitions in W.P. (MD) Nos.7599 of 2018 etc. batch, in its decision, dated 09.09.2020. According to him, in the said decision, it has been held that a Municipality is liable to pay Service Tax.

7. The learned Standing Counsel for the respondent would also submit that the decision of the Hon'ble Supreme Court in the case of ***Krishi Upaj Mandi Samiti vs. Commissioner of C.Ex. & S.T., Alwar reported in 2020 (58) G.S.T.L. 129 (S.C.)*** applies to the case of the petitioner and therefore, they are liable to pay Service Tax as demanded under the impugned order. However, the same is disputed by the learned counsel for the petitioner, who would submit that the said decision is not applicable to the case of the petitioner. The matter will have to be examined by the respondent. Admittedly, the ***Cuddalore Municipality*** case rendered by a learned Single Judge of this Court referred to supra has not been considered by the respondents in the impugned order and therefore, necessarily the impugned order has to be quashed and the matter will have to be remanded back to the respondent for fresh fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court.

8. For the foregoing reasons, the impugned order dated 30.09.2022 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court. The respondent shall pass final orders, after giving due consideration to the

orders of this Court ***in the cases of a) Cuddalore Municipality Vs. The Joint Commissioner of GST and Central Excise in W.P. No.8900 of 2017, dated 22.03.2021*** as well as **b)** ***St. Thomas Mount Cum Pallavaram Cantonment Board Vs. The Additional Directors and others in W.P. Nos.28468 and 28080 of 2021, 10.08.2022***, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2023

Index:Yes/No
Neutral Citation:Yes/No
Speaking order : Yes/No
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To
The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex,
5th Floor,
Anna Salai,
Nandanam,
Chennai - 600 035.

ABDUL QUDDHOSE, J.

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