BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 809 of 2023
and
W.M.P (MD) No. 787 of 2023

Mohammed Ibrahim Ahamed

... Petitioner

Vs.

1. The Assistant Commissioner of
Central GST and Central Excise,
Madurai II Division,
5-V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002.

2. The Commissioner of Central
GST and Central Excise (Appeals)
Coimbatore, Circuit Office at Madurai,
Central Revenue Buildings,
Bibikulam, Madurai - 625 002.

3. The Superintending Engineer,
Public Works Department,
Construction (Buildings and Maintenance),
Medical Works, Madurai - 625 002. ...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records in respect of impugned order in original No.MAD-ST-ASC-193/2022 dated 20.12.2022 in C.No.IV/09/21/2020-ST(Adjn.) passed by the First Respondent and quash the same and to pleased to direct the learned First Respondent to re-hear the entire issue.

For Petitioner : Mr. S.Renganathan

For Respondents : Mr. Na.Ga.Nataraj
Government Advocate for R3.
Ms.S.Ragaventhre,
Junior Standing Counsel for R1 & R2

ORDER

Heard Mr. S.Renganathan, Learned Counsel for the Petitioner, Mr. Na.Ga.Nataraj, Learned Government Advocate who takes notice for the Third Respondent and Ms. S.Ragaventhre, Learned Junior Standing Counsel who takes notice for the First and Second Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. According to the Petitioner, he has filed a Writ Petition in W.P. (MD)

No. 10869 of 2022 challenging the Notification in No. 9/2016-ST dated 01.03.2016 with reference to the eligibility for exemption to contracts entered after 01.03.2016 along with an application for interim injunction in W.M.P. (MD) No. 7833 of 2022 restraining the concerned authorities from giving effect to the impugned conditions therein, which is pending, but without awaiting its outcome, the First Respondent has proceeded to pass the impugned order determining the liability of the Petitioner for Service Tax Act, 1994, which is assailed in this Writ Petition.

3. In response to the said contention, Learned Counsel for the Respondents has referred to para 9.3 of the Master Circular on Show Cause Notice, Adjudication and Recovery, which reads as follows:-

> *"Call Book Cases : A call book of cases is maintained of such cases which cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance. The following categories of cases can to be transferred to call book:-*
>
> *I. Cases in which the Department has gone in appeal to the appropriate authority.*

II. Cases where injunction has been issued by Supreme Court/High Court/CEGAT, etc.

III. Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book.

IV. Cases admitted by the Settlement Commission may be transferred to the Call-book, as it is already covered under Category (ii) above. Where there are multiple noticees, the case can be transferred only in respect of those noticees who have made application in the Settlement Commission, and whose case has been admitted by Settlement Commission, Cases shall be taken out of the Call-Book after Settlement Order has been issued or where the case has been reverted back for adjudication."

It is highlighted from the aforesaid clarifications issued that in the absence of any specific interim order restraining the concerned authority from proceeding further during the pendency of the Writ Petition, there is no impediment for the First Respondent to take a final decision in the matter and in such circumstances, the Petitioner cannot challenge the final decision taken merely because an application seeking interim order is pending in the

Writ Petition challenging the notification in so far as it deprives exemption to the Petitioner in this case.

4. It is, no doubt, true that the said Departmental Circular does not expressly prohibit the concerned authority from adjudicating the matter in any Writ Petition relating to it is pending before the Court, but it would not denude the power of the Court to pass any interim order, interim or final, even after final order is passed by the concerned authority adjudicating the matter and any such decision taken would have to be certainly subject to the result of the further orders passed by the Court in the pending case.

5. Viewed from that perspective, the implementation of the impugned Original Order No. MAD-ST-ASC-193/2022 dated 20.12.2022 in C.No.IV/09/21/2020-ST(Adjn.) passed by the First Respondent shall be kept in abeyance, and depending upon the outcome of the orders, interim or final, to be passed in the pending Writ Petition in W.P. (MD) No. 10869 of 2022, further action shall be taken by the concerned authorities in accordance with law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

12.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
PKN

Note: Issue order copy on 16.06.2023.

To

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2. The Commissioner of Central
   GST and Central Excise (Appeals)
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   Bibikulam, Madurai - 625 002.

P.D.AUDIKESAVALU,J.

PKN

3. The Superintending Engineer,
   Public Works Department,
   Construction (Buildings and Maintenance),

Medical Works, Madurai - 625 002.

W.P.(MD)No.809 of 2023

12.01.2023