BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.03.2023**

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THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.5660 of 2020
and
W.M.P.(MD) Nos.4940 and 4942 of 2020

Tamilselvam ... Petitioner

/vs./

1.The Commissioner of Municipal Administration,
Ezhilagam Annexe,
VI Floor,
Chepauk, Chennai 600 005.

2.The Executive Officer,
Selection Grade Town Panchayat,
Thirupathur Town,
Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st and 2nd respondents to refund or adjust the GST which was paid by the petitioner for the year of 2016-2017, 2017-18, 2018-19, 2019-2020 for collection of market fee of Thirupathur Town Panchayat by considering the petitioner's representation dated 03.03.2020.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.J.John Rajadurai
Government Advocate

ORDER

The above writ petition is filed for a Mandamus directing the respondents 1 and 2 to refund or adjust the GST, which the petitioner has filed for the years 2016-2017, 2017-2018, 2018-2019 and 2019-2020 for the collection of the market fee of Thirupathur Town Panchayat.

2.It is the case of the petitioner that he is not liable to pay GST in the light of entry No.39 of the Notification No.25/2012, Service Tax, dated 20.06.2012 issued by the Ministry of Finance, Government of India, which reads as follows:-

> *"39.Services by "Government, a local authority or" inserted vide Notification 22/2016-Service Tax a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."*

3.He would also rely upon the circular No.13052/2016/D2 dated 03.05.2017, wherein the Government of India, Ministry of Finance (Department of Revenue), has brought out an amendment to Notification No.25/2012 dated 20.06.2012 in respect of exempting certain taxable services from the payment of service tax. Clause 39 has been amended as follows:-

> *"39.Services by a local authority or a governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution. As per article 243W of the Constitution read with 12th schedule of the following activities in relation to the municipal function are exempted from service tax from 01.07.2012 (a) fee for bus stand (b) lease for slaughter house (c) cycle stand tax (d) market fee (f) pay and use toilet facilities etc."*

4.The petitioner would therefore submit that since market fee has been exempted, the amounts collected should therefore be refunded back to the petitioner.

5.The second respondent, the Executive Officer has filed a counter *interalia* contending that when the three year licence period granted in favour of the petitioner expired on 31.03.2019, the second respondent, vide his proceedings dated 25.01.2019 in R.C.No.A5/1518/2014 had directed the petitioner to pay the balance amount of Rs.4,05,977/-, which was the lease amount, GST 12 and IT 1%. This notice was challenged by the petitioner by filing W.P.(MD) No.3902 of 2019 before this Court and on 21.02.2019, this Court had passed the following order:-

> *"5.The issue regarding the exemption of the service from the purview of the Act is yet to be finally adjudicated. Therefore, the writ petitioner can very well pay the said GST without prejudice to his contentions. If it is later held that the writ petitioner need not pay GST, the petitioner can always seek adjustment of the said amount later."*

6.Therefore, the learned Government Advocate for the respondents would submit that the petitioner has not been exempted from making the payment. The Assistant Director of Local Fund Audit, Sivagangai District had raised an audit objection at para No.19 that the year, in which the annual rent/lease amount of Thirupathur Town Panchayat exceeds Rs.10,00,000/-, service tax has to be collected and further, it is their contention that this annual rent/lease amount of Thirupathur Town Panchayat had exceeded Rs.10,00,000/- from the year 2007-2008. Therefore, the service tax has to be collected from 2007-2008. In these circumstances, the petitioner was liable to pay GST/service tax. The respondents would further submit that there is no rule or provision to refund or adjust GST. Therefore, they sought for dismissal of the writ petition.

7.Heard the learned counsels appearing on either side.

8.The Notification No.25/2012, Service Tax, dated 20.06.2012 and the subsequent circular amending the notification would indicate that the market fee is exempted from GST. Both the parties admitted that the above issue is pending adjudication. Therefore, considering the above submission, the Writ Petition is disposed of with a direction that in the event of the adjudication coming in favour of the petitioner, i.e; if the market fee is exempted from GST, then the amount collected should be adjusted towards future payments.

9.In the light of the above, the representation of the petitioner shall be considered and disposed of by the respondents within a period of one month from the date of receipt of a copy of this order, in the light of the Notification No. 25/2012, Service Tax, dated 20.06.2012 and the circular No.13052/2016/D2 dated 03.05.2017. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking	: Yes / No	**23.03.2023**
NCC	: Yes / No	
Internet	: Yes / No	
Index	: Yes / No	

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To

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2.The Executive Officer,
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Thirupathur Town,
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P.T.ASHA, J.

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W.P.(MD) No.5660 of 2020

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