BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.8119 of 2023
and
W.M.P.(MD)No.7494 of 2023

Periasamy Balasubramani ... Petitioner

versus

1. The Assistant Commissioner of
CGST and Central Excise,
Dindigul II Division,
No.5, S.I.Complex,
Race Course Road,
Dindigul – 624 001.

2. The Commissioner of CGST &
Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002.

3. The Designated Committee,
Sabka Vishwas (Legacy Dispute
Resolution) Scheme 2019,
Office of the Commissioner of CGST &

Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002.

4. The Superintendent of CGST &
Central Excise, Theni Range,
No.5A-1, First Floor,
Vasavi Colony,
Palanichettipatti,
Theni – 625 531.

5. The Commissioner of CGST & Central
Excise (Appeals) Coimbatore,
Circuit Office at Madurai,
Central Revenue Buildings,
Bibikulam,
Madurai – 625 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records in respect of impugned order-in-original No.MDU-ST-AC-04-2022 dated 31.01.2022 in C.No.V/15/34/2019-ST (Adjn) passed by the first respondent and quash the same and direct the first respondent to adjudicate the show cause notice C.No.V/15/34/2019-ST dated 31.12.2020.

For Petitioner : Mr.S.Renganathan

For Respondents : M/s.S.Raghaventhree,
Junior Standing Counsel

ORDER

The petitioner, who is a Civil Contractor, has constructed several buildings for the Government of India. Since these constructions have been made for the Government of India, the petitioner has sought for certain exemption by referring Notification No.25/2012-ST dated 20.06.2012. However, the same was not accepted by the Department, by referring the Notification No.6/2015 dated 01.03.2015 and by a show cause notice dated 31.12.2020, wherein, the petitioner was called upon to pay the service tax. Therefore, the petitioner has filed a writ petition in W.P.(MD)No.2127 of 2022 challenging the Notification No. 6/2015-ST dated 01.03.2015 and the show cause notice dated 31.12.2020. The writ petition filed by the petitioner was listed for hearing only on 03.02.2022 and this Court has also entertained this writ petition by granting an order of interim stay and also posted this writ petition along with a batch of similar writ petitions, which are pending before the Principal Seat. The Principal Seat has disposed of this writ petition along with the batch of writ petitions on 30.11.2022 in the following terms:

> "123. The prayer for a direction to refund of tax already paid by the petitioner also cannot be countenanced at these petitioners are liable to tax. Therefore, wherever the Orders-in-Original have been passed, the respective petitioners are given liberty to file statutory appeal before the Appellate Authority subject to the compliance of the other requirements of pre-deposit the amount as is contemplated under Section 35F of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994, within a period of thirty (3)) days from the date of receipt of a copy of this order.
>
> 124. Subject to the above, the appeals to be filed by the respective petitioners shall be entertained by the Appellate Authority before whom the appeals are to be filed by the respective petitioners within such time. If such appeals are filed within such time, the Appellate

> Authority shall pass appropriate orders in the proposed appeals to be filed by the respective petitioners on merits and in accordance with law without reference to the limitation.
>
> 125. Wherever Show Cause Notices have been issued, the respective petitioners are directed to give detailed replies to the same and participate in the adjudicatory mechanism provided under the Finance Act, 1994. Such of those petitioners shall file their replies within a period of sixty (60) days from the date of receipt of a copy of this order. The respondents shall thereafter pass appropriate orders on merits within a period of ninety (90) days, after giving the respective petitioners adequate opportunity of being heard."

However, based on the show cause notice dated 31.12.2020, the Department has already passed an order on 31.01.2022, i.e. after the filing of this writ petition in W.P.(MD)No.2127 of 2022, but before the writ petition was taken up for hearing by the Division Bench of the Principal Seat.

2. Now, the grievance of the petitioner is that the impugned order has been passed on the show cause notice without providing an opportunity to the petitioner and this order dated 31.01.2022 was also not reported before the Division Bench of the Principal Seat when a batch of writ petitions were taken up for hearing along with the writ petition in W.P.(MD)No.2127 of 2022. Therefore, the petitioner must be provided an opportunity as directed by this Court in W.P.(MD)No. 2127 of 2022 dated 30.11.2022.

3. The learned Junior Standing Counsel for Central Excise and Customs submits that the petitioner is having an appeal remedy as against this order dated 31.01.2022. Pursuant to the show cause notice, enquiry was conducted by the Department and this petitioner has also participated in the enquiry and has submitted his explanation for the same. Only thereafter, the Department has taken a decision on the show cause notice dated 31.12.2020. Therefore, it is not correct to say

that the petitioner was not provided any opportunity of hearing on the show cause notice.

4. This Court considered the rival submissions and perused the materials available on record.

5. The Department has issued a show cause notice to the petitioner on 31.12.2020 and pursuant to the show cause notice, the Department passed the order on 30.01.2022. Prior to that, the petitioner has filed a writ petition in W.P.(MD)No.2127 of 2022 on 25.01.2022 which was taken up for hearing only on 03.02.2022. This Court, while entertaining the writ petition has granted an order of interim stay and also directed that the writ petition be posted along with the similar writ petitions before the Principal Seat. The Division Bench of the Principal Seat also took up the writ petition along with the batch of writ petitions and after the notice to the respondents, the Division Bench has passed the order on 30.11.2022 permitting the respective

petitioners to submit a reply within a period of 60 days from the date of receipt of a copy of the order and the respondents shall thereafter, pass appropriate orders on merits within a period of ninety (90) days, after giving the respective petitioners adequate opportunity of being heard.

6. Even before the disposal of the writ petition filed by the petitioner challenging the show cause notice dated 30.12.2020, the Department passed the final order on 31.01.2022, without waiting for the outcome of the result in the writ petition. Further, even at the time of disposal of the writ petitions, the Department has failed to inform the Division Bench about the passing of the final order dated 31.01.2022. Therefore, the order passed by the first respondent dated 31.01.2022 is liable to be set aside.

7. Accordingly, the writ petition is allowed and the order passed by the first respondent dated 31.01.2022 is set aside. The petitioner and respondents shall comply with the directions issued by the Division

Bench of the Principal Seat in W.P.(MD)No.2127 of 2022 dated 30.11.2022. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
To
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