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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13048 of 2023
and
W.M.P(MD)No.11043 of 2023

Kunjarvel Poundass

... Petitioner

Vs.

The Assistant Commissioner of
GST and Central Excise,
Madurai II Division,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, calling for the records passed by the respondent in Order in Original No.MAD-ST-ASC-010-2023, dated 22.03.2023 and to quash the same as illegal, arbitrary, without jurisdiction and further direct the respondent to pass an order afresh after affording an opportunity of personal hearing.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.R.Nandakumar,
Senior Panel Counsel, assisted by
M/s.S.Ragaventhre,
Junior Standing Counsel



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ORDER

This writ petition is filed challenging the Assessment order, dated 22.03.2023.

2. Heard Mr.N.Sudalaimuthu the Learned Counsel appearing for the petitioner and Mr.R.Nandakumar assisted by Ms.S.Ragaventhre. With their consent, the writ petition is taken up for final disposal at the admission stage itself.

3. The respondent has issued a notice to the petitioner. But the petitioner has not filed any reply and thereby has not responded to the said notice. Thereafter, the respondent has fixed personal hearing on 18.11.2022, 16.12.2022 and 27.12.2022 and intimated the same to the petitioner. Inspite of three opportunities, the petitioner did not appear before the Authorities. Hence, the authorities left with no other option had passed the impugned order.

4. However, the petitioner has raised a crucial point before this Court. Admittedly, the petitioner has engaged in works contract. The respondent has also recorded that the petitioner is engaging in works contract especially in relation to the construction of check dams, repairing of irrigation



tanks, construction of Government schools and Government Polytechnic, etc.

The relevant provision for imposing the service tax for works contract is under Rule 2(ii)(A) of Service Tax (Determination of Value) Rules, 2006, wherein it states that the

“(A) in case of works contract entered into for execution of original works, service tax shall be payable on forty percent of the total amount charge for the works contract.”

As per the said rule, if the petitioner is considered as individual, the respondent ought to impose only 40%. Hence the respondent has not granted the abatement of 60% provided for the work contract. If the said rule is applied then the respondent is not empowered to impose 100% tax.

5. If the respondents have considered the petitioner as registered under the Company's Act then the petitioner is entitled to pay only 50% as per the S.No.9 of the Notification No. 30/2012-ST dated 20.06.2012. Under S.No.9 it states that “in respect of service provided or agreed to be provided in service portion in execution of works contract”, then “50% ought to be paid by the person providing service and 50% ought to be paid by the person receiving the service”. Since the respondent has imposed 100% service without invoking the Rule and Notification stated supra, this Court is inclined to interfere with the impugned Assessment order, dated 22.03.2023.



6. Therefore, this Court is inclined to quash the assessment order.

The petitioner is directed to submit his reply, within a period of two weeks, from the date of receipt of a copy of the order. Thereafter, the respondents shall grant personal hearing. The petitioner shall not take any adjournments and the entire assessment proceedings shall be completed within a period of eight weeks.

7. With these observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.07.2023

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

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S.SRIMATHY, J.

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