BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16007 of 2023
and
W.M.P.(MD).No.13423 of 2023

K.Vijayakumar ... Petitioner

Vs.

1.The Union of India,
Represented by its Secretary,
Ministry of Finance,
New Delhi.

2.The Deputy Commissioner GST and Central Excise,
Madurai – I Division,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

3.The Government of Tamil Nadu,
Represented by its Finance Secretary,
Fort St.George,
Chennai – 9.

4.The Chief Engineer,
(PWD), Buildings (C and M) Division,
Madurai.

5.The Executive Engineer,
(PWD), Buildings (Division I),
Madurai.

6.The Superintending Engineer,
(PWD) Buildings (C and M), Medical Works,
Madurai Circle, Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent in respect of the issue of Notification No. 06/2015-Service Tax dated 01.03.2015 published in Government of India Gazette Extraordinary Part II Section 3, Sub Section (i) No. 120 on 01.03.2015 and consequential order passed by the second respondent in Original No. MAD-ST-ASC-133-2022 dated 05.09.2022 and to quash the both are illegal, arbitrary, without jurisdiction and consequently direct the first respondent to grant exemption from paying service tax in respect of the works contract service including street light maintenance other than commercial nature to the Government, local bodies, statutory authorities etc with effect from 01.04.2015.

Or

Alternatively, in the event of this Court upholding the impugned notification, to issue a Writ of Mandamus directing the respondents No.3 to 6 to pay the petitioner or directly to the 2nd respondent, the service tax, penalty and the interest, thereon as demanded by the 2nd respondent vide Original No. MAD-ST-ASC-133-2022 dated 05.09.2022 in respect of works contract service including civil works contract service other than commercial nature rendered by the petitioner to the Government of Tamil Nadu (i,e) 3rd respondent from statutory authorities etc for the period from 01.10.2015 to 30.06.2017 within a time frame as fixed by this Court.

For Petitioner	:	Mr.S.Karunakar
For R-1 and R-2	:	Mr.R.Nandakumar, Senior Standing Counsel, Assisted by, Mr.S.Ragaventhree, Junior Standing Counsel.
For R-3 to R-6	:	Mr.B.Saravanan, Additional Government Pleader.

ORDER

This Writ Petition is filed for Mandamus, directing the respondents No.3 to 6 to pay the petitioner or directly to the 2nd respondent, the service tax, penalty and the interest, thereon as demanded by the 2nd respondent vide Original No. MAD-ST-ASC-133-2022 dated 05.09.2022 for the period from 01.10.2015 to 30.06.2017. Alternatively, to quash the Notification No. 06/2015-Service Tax dated 01.03.2015 and consequential order passed in Original No.MAD-ST-ASC-133-2022 dated 05.09.2022.

2. The contention of the petitioner is that he is a registered contractor under the respondents 3 to 6 and executing the works contract to the governmental authority. The petitioner was exempted from service tax until 31.03.2015 vide the Exemption Notification No.25/2012-ST dated 20.06.2012 under Entry No.12. Subsequently the said exemption notification was withdrawn with effect from 01.04.2015 vide Entry No.12A of the Notification No.25/2012-ST read with Section 102 of the Finance Act. But the first respondent relied on Notification No.06/2015 dated 01.03.2015, wherein the specific exemption was withdrawn, thereby the work contracts were also brought under the preview of the service tax. But the Notification No.06 was challenged before the Principal Bench in W.P.No.1185 of 2018 and the interim petition was dismissed. On appeal in W.A.No.756 of 2018 interim injunction was granted wherein the respondents were restrained from demanding service tax on the receipts received from the government departments for the works executed.

3. The respondent contended that as per the amended provisions, exemption is given only to Government from paying the service tax and private

individuals are not entitled for any exemption. But the petitioner submitted that the petitioner cannot pay the tax from his own pocket, the same have to be collected from the service recipient i.e. the third respondent and the same will be paid to the exchequer. In the present case, the third respondent has not paid any service to the petitioner. In the absence of collection of service tax from the 3rd respondent, the petitioner cannot pay tax which is against the principles of taxing statutes.

4. However, the contention raised by the petitioner is already decided by the Hon'ble Division Bench of this Court in W.P.No.24996 of 2019 batch vide order dated 30.11.2022 wherein, it is held that the work contractors are liable to pay the tax, however, they shall recover from their clients. The Hon'ble Division Bench has also granted 90 days time to file objections. If orders are passed, the assessee was granted time to file an appeal within a period of 30 days. Aggrieved over the said judgment, the assessee M/s.L.G.Associates had preferred Special Leave to Appeal (C) Nos.7181-7199 of 2023 and the same was dismissed vide order dated 10.04.2023.

5. In the present case, the petitioner had not attended the personal hearing, but the respondents had passed exparte order-in-original. Since the Hon'ble Division Bench has granted time to file an appeal, following the same the petitioner is directed to file an appeal and the petitioner is directed to file an appeal within 30 days from the date of receipt of the copy of order. The appellate authority shall consider the appeal without insisting on limitation within a period of twelve (12) weeks therefrom.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Secretary,
The Union of India,
Ministry of Finance,
New Delhi.

2.The Deputy Commissioner GST and Central Excise,
Madurai – I Division,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

3.The Finance Secretary,
The Government of Tamil Nadu,
Fort St.George,
Chennai – 9.

4.The Chief Engineer,
(PWD), Buildings (C and M) Division,
Madurai.

5.The Executive Engineer,
(PWD), Buildings (Division I),
Madurai.

6.The Superintending Engineer,
(PWD) Buildings (C and M), Medical Works,
Madurai Circle, Madurai.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.16007 of 2023

18.07.2023