BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.21451 of 2021
and
W.M.P(MD)No. 18017 of 2022

S.Ramesh ... Petitioner

Vs.

The Executive Officer,
Selection Grade Town Panchayat,
Alangulam,
Tenkasi District. ... Respondent

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 relating to the impugned notice in Na.Ka.No.9/2020/A1, dated 31.12.2020 on the file of the respondent and quash the same and consequently direct the respondent to re-fix the rent in respect of lease of Shop No.4, situated in Alangulam Bus Stand , Alangulam, Tenkasi District as per G.O.Ms.No.92, Municipal Administration and water Supply Department, dated 03.07.2007.

For Petitioner : M/s.S.Kumar

For Respondent : Mr.A.K.Manikkam,
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order, dated 31.12.2020 and a consequential direction to fix the rent, in respect of lease of Shop No.4, situated in Alangulam Bus Stand , Alangulam, Tenkasi District as per ***G.O.Ms.No.92, Municipal Administration and water Supply Department, dated 03.07.2007.***

2. Heard M/s.S.Kumar, learned Counsel appearing for the Petitioner and Mr.A.K.Manikkam, learned Special Government Pleader, appearing for the respondent. Perused the material documents placed on record.

3. Through the impugned order, the respondent has imposed Sales Tax to the petitioner. It is the case of the petitioner that he has occupying the Shop No.4, situated in Alangulam Bus Stand , Alangulam, Tenkasi District and the petitioner is entitled to pay rent for the shop. However, the respondent has imposed rent as well as imposed Sales tax. It is not known, how the respondent has imposed Sales tax, because of the reason that the petitioner is not coming under any Sales tax definition at all. Moreover, the Sales tax has collected by the respondent Panchayat. It is the purview of Service tax officer. Therefore, the impugned order is liable to be quashed.

4. The learned counsel appearing for the petitioner relied on the similar order passed by the learned Single Judge of this Court in ***W.P(MD)No. 3372 of 2017, dated 28.07.2022.*** The relevant portion of the order is extracted here under:

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"2. The writ petitioners were lessees under the respondent local body. They were occupying the shops allotted to them. The shops have since been demolished. The cases on hand pertain to the demand of service tax in respect of the lease period. According to the petitioners, the respondent is not justified in calling upon them to pay the service tax. There is no dispute that the writ petitioners are service recipients, while the respondent was the service provider. The learned counsel appearing for the writ petitioners draws my attention to the decision of the Hon-ble Supreme Court reported in (2018) 1 SCC 311 (Union of India V. Bengal Shrachi Housing Development Ltd.,).

3. The discussion of the issue starts from paragraph No.6 of the said judgment. In paragraph No.13, it had been laid down that the person liable for paying service tax, where the service of renting immovable property is agreed to be provided by the Government, is the provider of such service. It was authoritatively laid down that it is the provider of the service alone, who is liable for paying service tax. Of course the situation whatsoever will be different, if there is contract to the contrary. In this case, the local body is not able to draw my attention to any agreement between *the parties wherein the writ petitioners have agreed to pay the service tax. No such contractual liability is imposed on the writ petitioners. The respondent local body having been the service provider alone was liable to pay service tax. The local body was not justified in shifting the burden on the writ petitioners. "*

5. Therefore, this Court is of the considered opinion that imposing of Sales tax through the impugned order has passed without any jurisdiction and therefore, the same is liable to the quashed. The respondents shall calculate the rent as per ***G.O.Ms.No.92, Municipal Administration and water Supply Department, dated 03.07.2007.***

6. With these directions and observations, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

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

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To

The Executive Officer,
Selection Grade Town Panchayat,
Alangulam,
Tenkasi District.

S.SRIMATHY, J.

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W.P.(MD)No.2151 of 2021

18.07.2023