BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.10.2022

PRONOUNCED ON : 06.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.24557 of 2022
and
W.M.P.(MD)No.18639 of 2022

M.Natarajan Muniasamy ... Petitioner

vs.

1.The Government of India,
represented by its Secretary,
Ministry of Finance,
New Delhi - 110 001.

2.The Deputy Commissioner of CGST and Central Excise,
Madurai-II Division,
No. 5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

3.The Superintendent,
Office of the Assistant Commissioner of GST and Central Excise,
Madurai I Division,
No. 5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

4.The Government of Tamil Nadu,
represented by its Secretary,
Department of Finance,
St. George Fort, Chennai – 600 009.

5.The Government of Tamil Nadu,
represented by its Secretary,
The Department of Public Works Department,
St. George Fort, Chennai-600 009.

6.The Chief Engineer (PWD),
Public Works Department,
Southern Range – Madurai,
Madurai - 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notification No.6/2015 - 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 to quash the same and all orders / proceedings issued pursuant to the same and consequently, 1st respondent to grant exemption for the petitioner from paying the service tax in respect of the works contract service 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 Writ of Mandamus, to direct respondents 4 to 6 to pay either the petitioner or directly to the 2nd respondent, the service tax, interest and penalty if any thereon that may be demanded by the respondents 1 and 2 in respect of the works contract service other than commercial nature to the Government of Tamilnadu, with effect from 01.04.2015 to 30.06.2017.

For Petitioner	: Mr.Raja Karthikeyan
For R1	: Mr.P.Paul Pandi
For R2 to R6	: Mr.M.Siddarthan Additional Government Pleader

*****

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned Notification No.6/2015 - 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 all orders / proceedings issued pursuant to the same and consequently, 1st respondent to grant exemption for the petitioner from paying the service tax in respect of the works contract service 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 Writ of Mandamus, to direct respondents 4 to 6 to pay either the petitioner or directly to the 2nd respondent, the service tax, interest and penalty if any thereon that may be demanded by the respondents 1 and 2 in respect of the works contract service other than commercial nature to the Government of Tamilnadu, with effect from 01.04.2015 to 30.06.2017.

2.The petitioner is registered first class contractor, PWD Department, doing regular public works contract for the 5th and 6th respondents by entering into agreement with the respondents and their subordinate officials. The 2nd respondent passed an assessment order for the period from 01.04.2015 to 30.06.2017 for the service rendered under the category of 'works contract service' to the Government of Tamil Nadu. In the Assessment proceedings, the respondent has imposed service tax liability to the tune of Rs.40,87,464/- with interest of penalty on the petitioner.

3.The contention of the petitioner is that the service tax was exempted for the service rendered to the Government for public utility by Notification No.25 of 2012 issued by the Central Government. Subsequently, the exemption was withdrawn through the impugned Notification No.6 of 2015, Service tax, dated 01.03.2015. Hence, the 2nd respondent had passed Service Tax Assessment orders for the works contractor from 01.04.2015 to 30.06.2017 till the implementation of GST Act. The contention of the petitioner is that the withdrawal of notification is against the principles of levying and collecting of taxes. Hence, the notification was challenged in several writ petitions questioning the jurisdiction and authority of the respondents. Initially, there was an interim stay for collection of service tax until the validity of the impugned notification is decided. In the meantime, the respondents passed the assessment order. Hence, challenging the assessment order, the present writ petition is filed.

4. The impugned notification is challenged raising various grounds. The Learned Counsel for the petitioner submitted that the "work contract service" cannot be assessed and if it is assessed, it is highly unconstitutional. Inspite of the powers conferred with the 1st respondent to grant exemption under Section 93 of the Act, the impugned notification has been issued withdrawing the exemption for the service rendered under Public Works is against the interest of public contractors of Road Projects, etc. The works contractors service tax for the construction of other public places like hospitals and schools is highly discriminatory and violative of Article 14. The withdrawal of such exemption will lead to collection of Service Tax from the Government, again, the same is to be paid back to the Government, which will serve no purpose at all. The conditions laid down in the contract executed between the petitioner and the Government does not mandate the contractors to include the service tax. Hence, the respondent Government is liable to pay the Service Tax and not the contractors.

5. The Government of Tamil Nadu being the respondent is liable to pay Service Tax and the same shall not be vested on the contractors. Hence, the present assessment would amount to violation of Article 300 (a). If the contractors are made liable, the same would amount to gross violation of fundamental rights. Hence, the petitioner prayed to allow the writ petition.

6. The issue was challenged in several writ petitions in W.P.Nos.24996 of 2019 and batch. The Honourable Division Bench, vide order, dated 30.11.2022, dismissed the said batch of writ petitions with certain observations. The relevant portion of the order is extracted hereunder:

> *"118. The petitioners have to pay the respective service tax and recover the same from their clients namely, the Government Departments. As mentioned elsewhere in this order, the principles contained in Sale of Goods Act, 1930, will apply and it is open for the respective petitioners to press for such relief by applying the above principles to their cases.*
>
> *119. Therefore, it is open for the petitioners to reply to the impugned Show Cause Notices and meet out the allegations contained in the impugned Show Cause Notices and take advantage of the benefit given by the Parliament, vide Section 102 of the Finance Act, 2016 read with*

Notification 9/2016-ST, dated 01.03.2016. Similarly, it is open for the petitioners to establish that a part of the demand was time barred in terms of Section 73 of the Finance Act read with Rule 7 of Service Tax Rules, 1994. It is open for the petitioners to make representations to the respective Departments of the Government to reimburse the tax by applying the principle contained in Section 64-A of the Sale of Goods Act, 1930.

120. Therefore, it cannot be said that the petitioners are remediless. They can certainly file a suit to recover the amount from the person who engaged their services by invoking principles in Section 64A of the Sale of Goods Act, 1930.

121. In the light of the above, the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 fails. Consequently, the challenge to the impugned Show Cause Notices / Summons / Demand Notice, Orders-in-Original, Letters / Communication and etc. also fails.

122. As far as the prayer for Writ of Mandamus in Table No.7 to direct the authorities acting under the Finance Act, 1994 to collect tax payable by the petitioners from the recipients of service namely, State Public Works Department cannot be countenanced as the Mandamus would lie only if there is a corresponding duty cast upon the respondent to collect the same from the State Public Works Department the respondents herein. Therefore, these Writ Petitions also fail.

123. The prayer for a direction to refund of tax already paid by the petitioner also cannot be countenanced as 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 (30) 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.

126. Wherever investigations are pending and wherever / Summons / Summons / Letters or Communications have been issued to the such of those petitioners, they shall be completed within a period of six (6) months and thereafter, Show Cause Notices shall be issued to the respective petitioners. They shall file their reply to the respective Show Cause Notices within a period of sixty (60) days from the date of issuance of such Show Cause Notices. The respondents shall thereafter pass appropriate orders on merits within a period of 90 days, after giving the respective petitioners adequate opportunity of being heard. Respective petitioners shall co-operate with the respondents.

127. All these Writ Petitions are dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed."

7. Following the order passed by the Hon'ble Division Bench, this Court is dismissing the writ petition. However, the petitioner shall pay the respective service tax and recover the same from their clients namely, the Government Departments. The directions issued in the above order as stated supra shall be followed by the respective parties. No Costs. Consequently, the connected miscellaneous petition is closed.

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

06.01.2023

Tmg

To

1.The Deputy Commissioner of CGST and Central Excise,
Madurai-II Division,
No. 5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

2.The Superintendent,
Office of the Assistant Commissioner of GST and Central Excise,
Madurai I Division,
No. 5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai 625 002.

3.The Secretary,
Government of Tamil Nadu,
Department of Finance,
St. George Fort, Chennai – 600 009.

4.The Secretary,
Government of Tamil Nadu,
The Department of Public Works Department,
St. George Fort, Chennai-600 009.

5.The Chief Engineer (PWD),
Public Works Department,
Southern Range – Madurai,
Madurai - 625 002.

S.SRIMATHY, J

Tmg

W.P.(MD)No.24557 of 2022

06.01.2023