IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.7602 of 2021
and
W.M.P.No.8121 of 2021

M/s.Saraswathi Builders,
No.3033-B, Chockalinga Bawan,
Vth Cross Street,
Ram Nagar South,
Chennai – 600 091
Represented by its Proprietor ... Petitioner

Vs.

1. The Additional Commissioner of GST and Central Excise,
South Commissionerate,
692, M.H.U. Complex,
Nandanam,
Chennai – 600 035.

2. The Joint Commissioner of GST and Central Excise,
South Commissionerate,
692, M.H.U. Complex,
Nandanam,
Chennai – 600 035. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in relation to the order vide C.No.V/15/33/2019 – CS Adj dated 17.08.2020 and quash the same as devoid of merit and further direct the

1st Respondent to drop all proceedings in relation to SCN No.08/2019 – ADC.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the Impugned Order in Original No.C.No.V/15/33/2019-CS Adj dated 17.08.2020. By the Impugned Order, demand proposed in Show Cause Notice No.8/2019 – ADC dated 11.14.2019 has been confirmed.

2. Operative portion of the Impugned Order dated 17.08.2020 confirming the demand in the above Show Cause Notice is reproduced below:-

ORDER

*i. I confirm an amount of **Rs.60,31,921/-** (Rupees Sixty Lakhs Thirty One Thousand Nine Hundred and Twenty One Only), being the Service Tax payable by M/s.Saraswathi Builders, on the 'Construction Service' rendered by them during the period from April 2013 to June 2017 under Section 73(1) of the Finance Act, 1994;*

ii. I order payment of interest at appropriate rates on the Service Tax confirmed in Clause (i) above *under Section 75 of the Finance Act, 1994;*

iii. *I impose a penalty* ***Rs.60,31,921/-*** *(Rupees Sixty Lakhs Thirty One Thousand Nine Hundred and Twenty One Only), on M/s.Saraswathi Builders, in terms of Section 78 of the Finance Act, 1994;*

iv. *I impose a penalty of* ***Rs.10,000/-*** *(Rupees Ten Thousand Only) under Section 77 of the Finance Act, 1994 on M/s.Saraswathi Builders for not properly assessing their Service Tax liability in the ST-3 returns filed for the period from April 2013 to June 2017 as required under Section 70 of the Finance Act, 1994.*

3. The case of the Petitioner is that the Petitioner was rendering exempted service and was wrongly subjected to service tax. Therefore, it is submitted that the Impugned Order is Arbitrary and is liable to be quashed.

4. That apart, it is submitted that the mandatory Pre-Show Cause Notice Consultation as is contemplated as per Board's instruction dated 21.12.2015 bearing reference: CVC bearing reference F.No.1080/09/DLA/MISC/15 dated 21.12.2015 and in Master Circular of Central Board of Excise and Customs dated 10.03.2017 in Circular No.1053/02/2017-CX has not been complied with.

5. The learned counsel for the Petitioner would submit that the

Petitioner was entitled to benefit under Entry 12(A) of Mega Exemption Notification No.25/2012 dated 20.06.2012 which has been wrongly denied to the Petitioner as the Petitioner was providing services as part of the Government Universities and therefore, the institutions will be covered under the purview of the aforesaid Notification as defined in Section 2(k) and 2(s) of the Mega Exemption Notification No.25/2012 dated 20.06.2012.

6. On the other hand, learned Senior Standing Counsel for the Respondents would submit that the Writ Petition is devoid of merits and is liable to be dismissed.

7. It is submitted that the Impugned Order is a well considered Order and therefore, does not warrant any interference and therefore submit that at best the Petitioner can be relegated to work out the remedy before the appellate forum under Section 84 and 85 of the Finance Act, 1994. Hence, he prays for dismissal of the Writ Petition.

8. By way of rejoinder, learned counsel for the Petitioner would submit that there is no material available with the Respondents for invoking the extended period of limitation under Section 73 of the Finance Act, 1994.

9. In this connection, learned counsel for the Petitioner has relied on the following decisions:-

i. ***Tamil Nadu Housing Board*** *vs.* ***Collector of Central Excise, Madras****, 1994 (74) E.L.T. 9 (SC);*
ii. ***Commissioner of Central Excise, Salem*** *vs.* ***Salem Co-operative Sugar Mills Limited****, 2014 (35) S.T.R. 450 (Mad.);*
iii. ***ITW Signode India Limited*** *vs.* ***Collector of Central Excise,*** *2003 (158) E.L.T. 403 (S.C.)*

10. Finally the learned counsel for the Petitioner also would submit that after the role out of GST and first amendment to the Constitution, there is no jurisdiction of the authorities to proceed further with the demand.

11. There is no merits in the submissions of the Petitioner. The Petitioner has an alternate remedy. Thus, the Petitioner is given liberty to file a statutory appeal within a period of thirty (30) days from the date of receipt of a copy of this Order. The Registry is therefore directed to return the original copy to facilitate the Petitioner to workout the remedy under the provisions of the Central Excise Act, 1944 as applicable in terms of Section 84 and 85 of the Finance Act, 1994.

12. With the above liberty, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

1. The Additional Commissioner of GST and Central Excise,
   South Commissionerate,
   692, M.H.U. Complex,
   Nandanam,
   Chennai – 600 035.

2. The Joint Commissioner of GST and Central Excise,
   South Commissionerate,
   692, M.H.U. Complex,
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C.SARAVANAN, J.

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