IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.3002 of 2024
and W.M.P.Nos.3275 & 3276 of 2024

M/s.Mugundhan Builders,
Represented by its Managing Partner,
Mr.Iyyanarappan (M/A 50 Yrs),
No.22, Kamaraj Street,
Alankuppam, Irumbuliyur Post Auroville,
Pondicherry-605 111. ... Petitioner

-vs-

1.The Commissioner of GST and
Central Excise (Appeals 1),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-34.

2.The Assistant Commissioner of GST
and Central Excise,
Puducherry Division III,
No.14, Azeez Nagar,
Reddiarpalayam, Puducherry-010. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the respondent and to quash the impugned order in Appeal No.35/2023 dated 20.02.2023 passed by the 1st respondent as arbitrary.

For Petitioner : Mr.J.Ashish

For Respondents : Mrs.T.Hemalatha, Senior Standing Counsel

ORDER

An appellate order dated 20.02.2023 is challenged by the petitioner.

2. The petitioner undertakes civil construction work. During the financial year 2016-2017, the petitioner undertook such work for the Auroville Foundation for a total value of Rs.57,13,910/-. In relation thereto, the 2nd respondent issued a show cause notice dated 21.10.2021 and, after the petitioner replied thereto on 27.01.2022, the 2nd respondent issued an assessment order on 25.02.2022. The petitioner carried the matter in appeal before the 1st respondent and such appeal was rejected by order dated 20.02.2023.

3. Learned counsel for the petitioner challenges both the appellate and assessment orders on the ground that the petitioner is entitled to exemption from service tax under Notification No.25/2012-Service Tax dated 20.06.2012. Learned counsel also contends that the period of limitation prescribed under Section 73 of the Finance Act, 1994 (the Finance Act) is 30

months from the relevant date. By further contending that the relevant date is 15.08.2017, he submits that the period of limitation ended on 15.02.2020.

4.Mrs.Hemalatha, learned senior standing counsel, accepts notice on behalf of the respondents. She submits that the period of limitation is five years in cases where service tax was not paid or short paid on account of fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provisions of Chapter V of the Finance Act with intent to evade payment of tax. According to her, this case falls squarely within the scope of the proviso to Section 73(1) of the Finance Act. She also points out that an appeal lies before the Customs, Excise and Service Tax Appellate Tribunal (the CESTAT) in respect of the order impugned herein.

5.The documents on record disclose that the petitioner was put on notice and provided a reasonable opportunity before the assessment and appellate orders were issued. As such, no interference is warranted on account of breach of principles of natural justice. It should also be noticed that the CESTAT is empowered to condone delay if sufficient cause is shown.

6.In these circumstances, this is not an appropriate case for exercise of discretionary jurisdiction. Therefore, W.P.No.3002 of 2024 is dismissed by leaving it open to the petitioner to present an appeal before the CESTAT along with an application to condone delay. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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