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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3435 of 2011 and M.P.No.2 of 2011

P.Nalankilli
. ..Petitioner

Vs.

1. Union of India,
   Rep. By the Secretary,
   Ministry of Finance, Department of Revenue,
   Government of India, North Block,
   New Delhi – 110 001.

2. The Assistant Commissioner of Central Excise,
   Office of the Assistant Commissioner of
   Central Excise,
   (Karaikal Division),
   Karaikal. Puducherry Union Territory.

3. The Superintendent of Central Excise,
   Tiruvarur Range,
   12-A, Karumari Koil Street,
   Tiruvarur. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd Respondent in C.No.IV/16/07/2010 S.Tax order in original No.13/2010 (Service Tax) dated 27.09.2010 and connected order of corrigendum in No.IV/16/07/2010 and S.Tax dated 7.10.2010 and quash both as unconstitutional and illegal.

For Petitioner : Mr.S.Rajesh

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For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The writ petition is filed praying to call for the records of the 2nd Respondent in C.No.IV/16/07/2010-S.Tax order in original No.13/2010 (Service Tax) dated 27.09.2010 and connected order of corrigendum in No.IV/16/07/2010-S.Tax dated 7.10.2010 and quash the same.

2. The petitioner had undertaken contract work for the construction of godowns etc., for M/s.Tamil Nadu Civil Supply Corporation limited, Thanjavur (hereinafter “TNCSC”). During the course of audit of accounts of the TNCSC, it was noticed that contracts were awarded to the petitioner for construction of godowns which would attract levy of service tax under the category of commercial or industrial construction service. A notice was issued and opportunity of personal hearing was also granted to the petitioner. During the course of personal hearing, it was submitted by the petitioner that he was not aware of the service tax liability in respect of the contract with TNCSC under the category of commercial or industrial construction service. The above submission was rejected and was found that the petitioner had willfully suppressed the

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facts with an intention to evade payment of service tax and thus the demand as proposed was confirmed.

3. The impugned order gives rise to disputed questions of fact. It is trite law that when an effective alternate remedy is available, Courts would exercise restraint while exercising jurisdiction under Article 226 of the Constitution. More so when disputed questions of fact are involved. The learned counsel for the petitioner after submitting for a while would request that they may be granted the liberty to file an appeal.

4. In the circumstances, this Court is not inclined to entertain the writ petition. However, the petitioner is at liberty to file an appeal within a period of 6 weeks from the date of receipt of copy of the order. The writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

16.04.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

1. The Secretary,

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Ministry of Finance, Department of Revenue,
Government of India, North Block,
New Delhi – 110 001.

2. The Assistant Commissioner of Central Excise,
Office of the Assistant Commissioner of
Central Excise,
(Karaikal Division),
Karaikal. Puducherry Union Territory.

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Tiruvarur Range,
12-A, Karumari Koil Street,
Tiruvarur.

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MOHAMMED SHAFFIQ, J.

spp

W.P. No.3435 of 2011

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