IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6047 of 2022

Institute for Water Studies, Hudrology and Quality Control,
Water Resources Department,
Represented by its Chief Engineer and Director,
Taramani, Chennia -600 113. ....Petitioner

Vs

1. The Deputy Commissioner,
   GST and Central Excise,
   "Periyar EVR Maaligai, IV Floor,
   No.690, Anna Salai,
   Nandanam, Chennai – 600 035.

2. The Assistant Commissioner,
   GST and Central Excise,
   Chennai (South) Commissionerate,
   "Periyar EVR Maaligai", IV Floor
   690, Anna Salai,
   Nandanam Chennai – 600 035.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus to call for the records in Assessment No.023/036/01193 dated 10.09.2018 on the file of the 2nd respondent vide his order bearing C.No.V/18/ST/185/2017- Refund dated 03.04.2019 and quash the same with consequential direction to the second Respondent to refund the service tax amounting to Rs.95,06,778/- along with interest.

For Petitioner : Mr.Haja Nazureedeen
Additional Advocate General
Assisted by Mr.M. Venkateswaran
Spl. Government Pleader

For Respondents : No appearance

ORDER

This case was listed on 23.08.2024 and on 19.09.2024 and thereafter today ie., on 05.11.2024.

A.1 This writ petition is of the year 2022.

2. The petitioner is aggrieved by the Impugned Order-in-Original No.39/2019(R) dated 03.04.2019 passed by the second respondent.

3. By the Impugned Order, the second respondent has partly allowed the refund of amount, pre-deposited under Section 35F of the Central Excise Act, 1944 together with interest and has rejected the refund claim for a sum of Rs.95,06,778/-. Operative Portion of the Impugned Order reads as under:-

> ***"29. I hereby sanction the refund of Rs.12,40,493/- (Rupees Twelve Lakhs Forty Thousand Four Hundred and Ninety Three only) being the refund of Rs.10,00,000/- pre-deposit made by them under Section 35F of the Central Excise Act, 1944, with the interest of Rs.2,40,493/-***

to the Institute for Water Studies, Water Resources Organisation, Public Works Department, Government of Tamil Nadu, Tharamani, Chennai – 600 113.

30. I hereby reject the refund claim of Rs.95,06,778/- (Rupees Ninety Five Lakhs Six Thousand Seven Hundred and Seventy Eight only) which is the Service Tax reportedly paid by the Institute for Water Studies, Water Resources Organisation, Public Works Department, Government of Tamil Nadu, Tharamani, Chennai – 600 113 for the reasons stated in Para 22 supra."

4. It appears that the petitioner had earlier suffered an adverse order in Order-in-Original No.30/2004 dated 07.04.2004 whereby the service tax demand of Rs.35,30,598/- was confirmed on the reimbursable expenses paid to M/s.Tahal Consulting Engineers Limited, Israel, in terms of Section 73(2) of the Finance Act, 1994.

5. Apart from the aforesaid demand, penalty was also imposed on the petitioner under Section 76 of the Finance Act, 1994 and interest under Section 75 of the Finance Act, 1994.

6. The petitioner unsuccessfully challenged the aforesaid order dated 07.04.2004 before the Assistant Commissioner of Central Excise

(Appeals), Chennai. The Commissioner of Central Excise (Appeals), Chennai passed Order-in-Appeal No.11/2005 (M-ST) dated 15.04.2005 and rejected the appeal filed by the petitioner and thus upheld the passed by the Assistant Commissioner of Central Excise, Service Tax Cell, Chennai-IV Commissionerate, Chennai in Order-in-Original No.30/2004 dated 07.04.2004.

7. Ultimately, the petitioner had succeeded before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench at Chennai. The CESTAT vide Final Order No.41024/2014 dated 31.12.2014, allowed the appeal filed by the petitioner with consequential relief if any, admissible in accordance with law and also held that there shall be no demand for the period before 18.04.2006.

8. It is in this background, the petitioner has filed refund claims for the tax paid during the period and pre-deposited the amount pursuant to Order-in-Original No.30/2004 dated 07.04.2004.

9. While refund of the pre-deposit made under Section 35F of the Central Excise Act, 1944 as made applicable to the provisions of the

Finance Act, 1994 has been allowed, however, as far as the balance refund for a sum of Rs.95,06,778/- has been rejected by the second respondent with the following observations:-

> ***"22. As regards the amount of Rs.95,06,778/-, as per the discussions above, the claimant is eligible for refund of Rs.95,06,778/- on merit. But they have not produced any clinching evidence to authenticate the payment made to the exchequer, such as challans, ST-3 returns etc. The documents submitted by them support only the processes made by them to make the payment leading to the issue of cheque. In the instant case, the claimant have produced their internal documents which support their process or payment only, but they have failed to produce the proper evidences/documents such as Payment Challan for their payments made as service tax. They have not produced copies of the ST3 returns filed with the department for the relevant period. It is also not known as to whether they had availed cenvat credit for the payment made to the tune of Rs.95,06,778/- under reverse charge and utilised the same for payment of their Service Tax liability in the absence of any returns filed with the department. In view of the reasons explained above, the claimant is not eligible for refund of Rs.95,06,778/- and therefore it is not sanctioned."***

B.1 I have perused the order impugned order passed by the respondent in Order -in -Original No.39 of 2019 dated 03.04.2019 rejecting the claim of the petitioner. Para(22) of the impugned order which was extracted above clearly indicates that the petitioner has not produced any documents to substantiate the tax that was paid on the reimbursable expenses. The claim has not been substantiated by the petitioner.

2. Under the circumstances, I do not find any merits in challenge the impugned order. However, one opportunity can be given to the petitioner to produce the documents before the respondents to substantiate that petitioner was indeed entitled for refund of the amount paid by the petitioner for a sum of Rs.95,06,778/-.

3. Under these circumstances, the impugned order is quashed and the case is remanded back to the respondent to pass a fresh order. It is made clear that, it is the last opportunity to the petitioner to substantiate his claim. Since the impugned order was passed in the year 2019, the respondent shall pass order as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this order. Petitioner is directed to cooperate with the respondent.

4. With the above observations and directions, this Writ Petition is disposed. No costs.

05.11.2024

Index :Yes/No
Neutral Citation : Yes

Speaking order : Yes
Sma

To
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GST and Central Excise,
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C.SARAVANAN, J

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