IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7012 of 2024
and
W.M.P.Nos.7829, 7831 & 7834 of 2024

Chennai Metropolitan Water Supply and Sewerage Board,
Represented by its Managing Director,
No.1, Pumping Station Road,
Chintadripet,
Chennai 600 002. ... Petitioner

Versus

The Additional Commissioner, CGST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records of the Impugned Order-in-Original No.163/2023 CH.N(ADC)(GST), dated 22.12.2023 in DIN No: 20231259TK0000819234 on the file of the respondent and quash the same.

For Petitioner : Mr. R. Vijayaraghavan,
for Mr. Subbaraya Aiyar Padmanabhan.

For Respondent : Mr.Ramesh Kutty,
Senior Standing Counsel.

ORDER

An order dated 22.12.2023 imposing tax, interest and penalty on the Chennai Metropolitan Water Supply and Sewerage Board (*the CMWSSB)* is the subject of challenge. The petitioner was constituted under an Act of the Tamil Nadu Legislature for the provision of water supply and sewerage in the Greater Chennai area. Pursuant to an inspection, summons was issued to the petitioner in September 2021. The petitioner replied thereto. On account of not being satisfied with such reply, a show cause notice was issued to the petitioner on 27.09.2023. Such show cause notice was replied to on 27.10.2023. Eventually, the order impugned herein was issued on 22.12.2023.

2. Learned counsel for the petitioner invited my attention to Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 (*Notification No.12/2017*). He pointed out that *Notification No.12/2017* provides for an exemption as regards services provided by a governmental

authority, including a municipality, under Article 243W of the Constitution of India. He further submitted that water is expressly exempted under Notification No.2/2017 – Central Tax (Rate) dated 28.06.2017 (*Notification No.2/2017)*. Even with regard to purified water, he submits that a clarification was issued on 09.08.2018 to the effect that providing drinking water for public purposes is exempt from GST. In fact, learned counsel submits that by subsequent Notification No.14/2017 – Central Tax (Rate), dated 28.06.2017, the Central Government, on the recommendation of the GST Council, has notified that services by way of activity in relation to functions entrusted to a panchayat under Article 243G of the Constitution are to be treated as neither supply of goods nor supply of services. According to learned counsel, therefore, the impugned order is unsustainable. Without prejudice, learned counsel submits that the petitioner would remit a sum of Rs.3 Crore as a condition for remand.

3. Mr. Ramesh Kutty, learned senior standing counsel, accepts notice for the respondent. At the outset, he submits that an alternative remedy is available to the petitioner and that this writ petition should not be entertained. He further submits that GST is leviable in relation to

distribution services, including distribution of water. He contends that the petitioner not only provides water supply and sewerage facilities through pipelines to the general public, but also supplies water including purified water, in tankers at commercial and dynamic rates to commercial establishments and large industrial units. Therefore, he contends that the impugned order contains no infirmity in as much as the petitioner is engaged in a composite supply and the respondent correctly identified the principal supply from and out of such composite supply. By referring to Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, learned senior standing counsel contends that the distribution of water is subject to GST since it falls under "Heading 9969". He submits that the respondent concluded that the petitioner was supplying purified water, and that such factual determination cannot be interfered with in course of these proceedings.

4. On perusal of the impugned order, it is evident that the adjudication turned on two factors. First, the adjudicatory authority concluded that the petitioner was purifying the water and that the same would not fall within the scope of exemption. Learned counsel for the

petitioner placed on record a note with regard to the difference between potable water and purified water. Learned counsel points out that potable water is required to conform to norms laid down in BIS:10500-2012, whereas purified water is required to fulfil the norms laid down in BIS:14543:2016. Without taking these aspects into consideration, the impugned order proceeded on the basis that the petitioner was supplying purified water.

5. Secondly, the adjudicating authority concluded that the activity of the petitioner is a composite supply and that supply through mobile units falls within the scope of "Heading 9969" (Serial No.13), which is taxable at 18%. On such basis, CGST and SGST of Rs.96,10,02,025/- each was imposed along with interest and penalty thereon. The order does not contain any details of the value of supply of water to house holds and other premises through pipelines; the value of supplies made through tankers on account of insufficiency of water in the relevant areas; and the value of supplies made through mobile units on account of the establishments concerned requiring higher quantities of water, which are supplied at commercial rates. Without such classification, the adjudicating authority

could not have arrived at the conclusion that the principal supply is through mobile units at commercial rates. As a corollary to the above conclusion, the adjudicating authority further concluded that the supply does not fall within the scope of the exemption notification. Since such conclusion was arrived at without differentiating between the services provided by the petitioner, the matter requires re-consideration.

6. Although a remand is warranted to enable reconsideration of both the applicability of exemption notifications and the conclusion regarding principal supply, it is also necessary to balance the interest of CMWSSB and revenue interest. Upon considering all relevant factors, I am of the view that the petitioner should remit a sum of Rs.3 Crore.

7. For reasons set out above, the impugned order is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits a sum of Rs.3 crores within six weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice by enclosing all the relevant documents within a maximum period of four weeks. Upon receipt thereof, and upon

being satisfied that a sum of Rs.3 crores was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of a sum of Rs.3 crores from the petitioner. It is needless to say that the remittance of Rs.3 crores shall abide by the outcome of the remanded proceedings.

8. W.P.No.7012 of 2024 is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are also closed.

23.04.2024

Index : No
Speaking Order : Yes
Neutral Case Citation : No

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To

The Additional Commissioner, CGST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

SENTHILKUMAR RAMAMOORTHY,J.

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