IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.8186 of 2021
and
W.M.P.No.8739 of 2021

M.Selvakumar ... Petitioner

Vs.

The District Manager,
TASMAC Ltd., Tiruvarur District,
Master Plan Complex,
Mannargudi Road, Vilamal,
Tiruvarur – 610004 …Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the proceedings of the respondent bearing Na.Ka.No.51/2020/A1 dated 26.02.2021 and quash the same as illegal.

For Petitioner : Mr.P.Suresh Babu

For Respondent : No appearance.

ORDER

Heard the learned counsel for the petitioner. No representation for the respondent.

2. This writ petition has been filed challenging the impugned

proceedings Na.Ka.No.51/2020/A1 dated 26.02.2021 whereby imposing a punishment of Rs.10,000/- and GST thereon Rs.800 totally to Rs.10,800/- (wrongly mentioned as Rs.11,800 in the impugned order) and requiring the petitioner to pay the said amount.

3. The learned counsel for the petitioner mainly contested the said impugned order on the ground that the respondent passed the said order in gross violation of principles of natural justice and without conducting any enquiry, though the petitioner has denied liability to pay any amounts.

4. It is also further brought to the notice of this Court that under similar situation, the learned Single Judge of this Court dealt with the matter and the impugned orders therein were set aside on the ground of violation of principles of natural justice in W.P.No.190 of 2021 & batch dated 08.01.2021 and W.P.No.12657 of 2020 & batch dated 22.02.2021 and copies of the said orders are also placed before this Court.

5. This Court has thoroughly perused the said orders and is convinced that the issue raised in this writ petition is squarely covered by the

orders passed by the learned Judges. However, it is also noticed that the learned Judges also followed yet another order passed by the learned single Judge of this Court in W.P.(MD)No.10355 of 2020 dated 18.12.2020 wherein, the learned Judge held as under:

> *"32. The next question that arises for consideration is whether the penalty imposed in a disciplinary proceedings in a service matter is liable for GST, in terms of Section 7(1) (d) or 7(1-A) of the GST Act, 2017. Admittedly the said Section 7(1) (d) was not in force as on the date of passing the impugned order in the month of September 2020. The said Section was omitted with effect from 01.02.2019. The respondent, in his counter clearly stated that the notice of collection of GST was issued under Section 7(1) (d) alone. Therefore, without any provision/authority, the third respondent has issued the show cause notice to collect the GST, which is totally illegal.*
>
> *33.Secondly, even assuming that Section 7(1A) of the Act r/w Rule 5(e) of the Rules will be applicable and the show cause notice was issued in accordance with the said provision, as contended by the learned counsel for the respondents, nowhere either in the show cause notice or in the impugned order or in the counter affidavit, the respondents never ever stated about the applicability of*

Section 7(1A) r/w Rule 5(e). It would be apposite to mention Section 7(1A), which reads as follows:-

'Agreeing to the obligation to refrain from an act, OF or to tolerate an act or a situation, or to do an act.'

34. By referring the above said Section, the respondents submitted that the petitioner refrained from performing to prevent the shortage of supply, so that they have imposed the penalty and as such it would attract the GST. This Court is not in a position to accept the present approach of the respondents due to the reason that the imposition of any GST will arise only when the penalty imposed in the course of trade or commerce. During the course of business, if any agreement was entered, where there is a delay in supply or in payment, if any, penalty imposed as per the agreement, such penalty comes under the purview of Section 7 (1A) for the imposition of GST. However, in the present case, the penalty imposed was in a disciplinary proceedings to an employee which would not attract GST.

35.In any angle, the imposition of the GST by the respondents, to the penalty imposed, under Rule 7(b) (xiv) of the Code, in a disciplinary proceedings initiated against the employees would not attract the GST and the penalty referred therein would only refer the penalty imposed in the course of trade or commerce.

36.As such in the present case the penalty was imposed in a disciplinary proceedings which cannot be construed that the penalty imposed in the course of trade or commerce for the imposition of GST.

37. This Court finds substance in the arguments made by Mr.R.V.Rajkumar, learned counsel appearing for the petitioners in some of the writ petitions in the batch and this Court recorded its appreciation for his assistance in the present writ petition.

38. Therefore, I am of the opinion that the GST imposed by the respondents is illegal on the face of it and the same is liable to be set aside."

6. In the light of the above and for the reasons assigned by the learned Judge, as extracted above, the impugned order cannot be sustained and the same is set aside and the respondent is at liberty to take appropriate action if he is so advised in accordance with law.

7. Accordingly, the writ petition is allowed and the connected miscellaneous petitions, if any, shall stand closed. No costs.

26.06.2024

Index : Yes/No
Speaking Order : Yes/No

dpa

To:

The District Manager,
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Tiruvarur – 610004

MUMMINENI SUDHEER KUMAR,J.

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