IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16346 of 2022
and
W.M.P.Nos.15662 and 15663 of 2022

M/s.Kailainathan Associates,
Wrongly Mentioned in Impugned order as
V.Kailainathan Associates,
Represented by its proprietor:
V.Kailainathan
No.76-B, South Street,
No.2, Avarampalayam
Coimbatore – 641 006. ... Petitioner

Vs.

1.The Assistant Commissioner of GST & Central Excise,
Coimbatore II Division,
No.1441, ELGI Building,
Trichy Road,
Coimbatore – 641 018.

2.The Government of Tamil Nadu,
Represented by its Finance Secretary,
Fort St.George,
Chennai – 600 009.

3.The Superintending Engineer,
Public Works Department,
Buildings Construction and Maintenance
Division, Circle,
Coimbatore – 641 001.

4.The Executive Engineer,
Public Works Department,
Buildings Construction and Maintenance Division,
Coimbatore – 641 001.

5.The Executive Engineer,
Public Works Department,
Buildings Construction and Maintenance Division,
Erode – 1. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned Order in Original No.10/2022-ST(AC) dated 10.02.2022 and hand delivered on 28.05.2022 by the 1st respondent and to quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap

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

ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

2. In this writ petition, the petitioner has challenged the impugned Order-in-Original No.10/2022-ST(AC) dated 10.02.2022 passed by the first respondent herein. The impugned order preceeds a Show Cause Notice No.6/2020-ST dated 16.12.2020, wherein, the petitioner was called to show cause as to why:-

(i) the extended period of limitation for recovery of service tax under proviso to Section 73(1) of Chapter V of the Finance Act, 1994 should not be invoked for recovery of Service Tax not paid by them;

(ii) an amount of Rs.48,12,299/- (ST:45,98,266/-, Swatch Bharat Cess:1,34,951/- Krishi Kalyan Cess:79,082/-) as detailed in Annexure-1, being the Service Tax on the taxable services provided during the period from 01.04.2015 to 30.06.2017 should not be demanded from them under the proviso to Section 73(1) of the Finance Act, 1994;

(iii) appropriate interest should not be recovered under Section 75 of the Finance Act, 1994;

(iv) Penalties should not be imposed on them under Section 77(1)(a) and 77(2) of the Finance Act, 1994 inasmuch as they failed to take Registration and file ST-3 returns for the above said period;

(v) penalties should not be imposed on them under Section 78(1) of the Finance Act, 1994 as they had deliberately suppressed the facts with intent to evade payment of service tax.

3. The petitioner was also given three personal hearing notices. However, the petitioner failed to attend personal hearing and therefore the case taken up for adjudication pursuant to which the impugned order has been passed. Operative portion of the impugned order reads as under:-

> "*(i) I hold that the extended period of time limit for recovery of Service tax under proviso to Section 73(1) of the Finance Act 1994 read with Section 174 of the CGST Act, 2017 is invokable in this case.*
>
> *(ii) I confirm and demand the service tax amount of Rs.48,12,299/- (ST:45,98,266/-, Swatch Bharat Cess:1,34,951/- Krishi Kalyan Cess:79,082/-) as determined in para 6 above for the period 2015-16, 2016-17 and 17-18 (upto June'17) under Section 73(2) of the Finance Act, 1994*

read with Section 174 of the CGST Act, 2017.

(iii) I demand appropriate interest under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 on the above amount of service tax.

(iv) I impose a penalty of Rs.48,12,299/- under Section 78(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 on the service provider.

(v) I impose a penalty of Rs.10,000/- under Section 77(1)(a) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 for failing to take registration with the Department.

(vi) I impose a penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 on the service provider.

(vii) As per the proviso to Section 78(1) of Finance Act, 1994, where service tax and interest in paid within a period of thirty days of date of receipt of the order determining the amount of service tax under sub-section (2) of Section 73 as indicated in (ii) above, the penalty payable shall be twenty-five percent of the service tax so determined provided if the amount of such reduced penalty is also paid within such period. The assessee can avail the facility of this reduced penalty under the above said Section subject to the conditions of the said Section."

4. The personal hearing was fixed on 30.11.2021 and thereafter on 22.12.2021 and 29.12.2021 which were communicated to the petitioner vide communication dated 14.12.2021 and 27.12.2021.

5. The petitioner appears to have claimed that the petitioner was entitled to exemption under Notification No.25/2012-ST dated 20.06.2012 on the services provided to various Government Department such as respondent nos.2 and 3.

6. This Court has already answered the issue partly against the contractors in the writ petition that were filed before this Court. However, liberty has been granted to the assessee to participate in the proceedings, if they had not filed any reply. Since the notice was issued during the Covid – 19 pandemic and the personal hearing also held during the Covid-19 pandemic, Court is inclined to set aside the impugned order and remits the case back to the first respondent to pass a fresh order on merits. Needless to state, the petitioner shall be heard before final orders are passed. The first respondent shall pass a final orders on merits and in accordance with law preferably within a period of 6 months from the date of receipt of a coy of this order.

7. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected writ miscellaneous Petitions are closed.

13.12.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
jas

To

1.The Assistant Commissioner of GST & Central Excise,
Coimbatore II Division,
No.1441, ELGI Building,
Trichy Road,
Coimbatore – 641 018.

2.The Government of Tamil Nadu,
Represented by its Finance Secretary,
Fort St.George,
Chennai – 600 009.

3.The Superintending Engineer,
Public Works Department,
Buildings Construction and Maintenance
Division, Circle,
Coimbatore – 641 001.

4.The Executive Engineer,
Public Works Department,
Buildings Construction and Maintenance Division,
Coimbatore – 641 001.

5.The Executive Engineer,
Public Works Department,
Buildings Construction and Maintenance Division,
Erode – 1.

C.SARAVANAN, J.

jas

W.P.No.16346 of 2022
and
W.M.P.Nos.15662 and 15663 of 2022

13.12.2024