IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16556 of 2022
and
W.M.P.No.15840 of 2022

The Commissioner,
Pollachi Municipality
No.108, Palghat Road,
Pollachi – 642 001
Coimbatore District. ... Petitioner

Vs.

1.The Commissioner of GST &
Central Excise (Appeal -1),
No.6/7, ATD Street,
Race Course Road,
Coimbatore – 641 018.

2.The Joint Commissioner of GST &
Central Excise,
Coimbatore – 641 018. ... 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 on the file of the respondents relating to the Impugned Order of the first respondent bearing CMB – CEX – 000 – APP – 019 – 22 dated 22.03.2022 in so far as the demand for Service Tax of Rs.1,11,76,431/- in respect of Renting of Immovable Property and quash the same.

For Petitioner : Mr.B.Anand

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

ORDER

In this Writ Petition, the petitioner has challenged the impugned Order in Appeal No. CMB – CEX – 000 – APP – 019 – 22 dated 22.03.2022. By the impugned order, the first respondent has partially rejected the appeal filed by the petitioner herein against the demand confirmed by the second respondent/Joint Commissioner against the Order-in-Original No.01/2021-(ST)JC dated 08.01.2021. Operative portion of the impugned order reads as under:-

> *"9.3. On a comparison of services under consideration rendered by the appellant stated in para 8 with the services stated in para 9.1 above, it is clearly evident that the services rendered by the appellant are not covered under the exemption sought. Therefore, the exemption is not available applying the rule of strict interpretation of exemption notification.*
>
> *10. Proceeding to examine whether penalty is imposable on the appellant, the Madurai Bench of the Hon'ble High Court of Madras has held in the case of*

Madurai Corporation Vs. the Commissioner of Central Excise, Madurai, as follows:

"8. Of course, I must sustain the contention of the petitioners that Tribunals throughout India have taken the view that penalty ought not tobe levied on the local bodies. For instance, CESTAT, South Zonal Bench, Chennai ST/40756-40757/2017 (CCE, Tirunelveli vs. M/s.Colachel Municipality) dated 25.07.2017, had noted that the earlier appeals of the revenue against the orders of the Commissioner (Appeals) involving the issue of non-imposition of penalty were rejected by the Tribunal. The reason for waiver was that no government body can be imputed with the intent to commit fraud or collusion to defraud revenue. Since the local bodies are discharging statutory obligation by way of providing public service without any profit making intent and amount so collected is eventually spent for the welfare of the public, there cannot be any malafide intention to evade payment of service tax. It is for this reason, the Tribunals throughout India have been taking a consistent stand in directing waiver of penalty. The respondent authorities are bound by the view taken by the jurisdictional Tribunal. Therefore, levying of penalty on the local body is clearly not warranted and they are accordingly set aside."

Respectfully following the above observation, I hold that no penalty will be leviable on the appellant.

11. In view of the foregoing, the service tax demand along with interest made in the impugned order in respect of 'Renting of Immovable Property' service has to be upheld. The penalties imposed in the impugned order have to be set aside.

12. Now, I take up the second issue, viz., whether 'Legal charges' paid by the Municipality are liable to service tax under Reverse Charge Mechanism. I find that in *terms of Notification No. 30/2012-ST dated 20.06.2012, the taxable services provided or agreed to be provided by an individual advocate or a firm of advocates are taxable on reverse charge basis only if provided to a 'business entity' located in the taxable territory. In this context, the definition of business entity' assumes significance. Clause 17 of Section 658 of the Finance Act, 1994 defines 'business entity' as follows:*

"Business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

13."Municipality" is an institution of governance constituted to carry out the functions charted under Article 243W of the Constitution of India read with Twelfth Schedule of the Constitution. It also falls within the meaning of 'local authority' as defined under Section 658(31) of the Finance Act, 1994, whereas a 'business entity' involves itself in activities pertaining to industry, commerce, business or profession and is drivenby the motive of profit. Secondly eventhough a municipality carries out work for furtherance of business as in the instant case, it is to be noted that these are not 'ordinarily' carried out as the main function of municipality are statutory functions as laid down in the constitution. Thus, by no stretch of imagination a 'municipality' be termed as a business entity. Therefore, the liability to pay service tax on 'legal charges' stands abdicated and the appeal succeeds on this count.

14. Appeal partially rejected and partially allowed as outlined in the above paragraphs."

2. Both the counsel submitted that as on date the issue is covered in favour of the petitioner in terms of the decision of this Court rendered in the case of ***Cuddalore Municipality*** and ***Virudhachalam Municipality***. The decision of this Court in the case of ***Cuddalore Municipality*** and ***Virudhachalam Municipality*** rendered on 22.03.2021 is now reported in 2021 (55) GSTL 397 (mad). This Court has also followed the said decision in the case of ***The Commissioner, Salem City Municipal Corporation*** Vs. ***The Additional Commissioner, GST and Central excise and another***, vide order dated 05.01.2022 in W.P.No.11090 of 2019. Although appeal is pending before the Division Bench of this Court in W.A.No.820 of 2020 against the common order passed on 22.03.2021 in the case of ***Cuddalore Municipality*** and ***Virudhachalam Municipality*** is concerned, in the absence of any stay, this Court is inclined to allow this Writ Petition.

3. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

20.11.2024

Index:Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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