BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.6983 of 2024 and
WMP(MD) No.6502 of 2024

Manoharan.G ... Petitioner

Vs

1.The Commissioner of CGST and Central Excise,
GST Bhavan,
Central Revenue Buildings,
No.4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai - 625 002.

2.The Deputy Commissioner of CGST and Central Excise,
Madurai II Division,
Central Revenue Buildings,
VP Rathinasamy Nadar Road,
Bibikulam,
Madurai - 625 002.

3.The Assistant Commissioner of CGST and Central Excise,
Madurai II Division,
Central Revenue Buildings,
VP Rathinasamy Nadar Road,
Bibikulam,
Madurai - 625 002. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order-in-original of the 2nd respondent in MAD-ST-ASC-63-2022 dated 21.01.2022 and quash the same and consequently direct to re-do the assessment afresh after giving due opportunity.

For Petitioner	: Mr.R.Veeramanikandan
For Respondents	: Mr.N.Dilip Kumar Standing Counsel

O R D E R

The petitioner is a contractor under the PWD Department, Government of Tamil Nadu. The petitioner has claimed exemption for the services provided to the Government. However, the same was withdrawn vide Notification No.6/2015-Service Tax, dated 01.03.2015. In pursuant to the above notification, the petitioner was issued with a show cause notice on 28.12.2020, proposing to levy service tax along with penalty on the alleged services rendered by the petitioner for the period from 01.04.2015 to 30.06.2017. The petitioner has offered his explanation. However, without considering the same, the impugned order has been passed on 21.01.2022, confirming the demand of service tax along with penalty. Challenging the same, the petitioner is before this Court.

2.The learned counsel for the petitioner submits that this issue has already been decided by the Division Bench of the Principal Seat of this Court in W.P.No.24996 of 2019, dated 30.11.2022, wherein, similar contractors are directed to approach the appellate authority and the relevant portion is extracted as under:-

> *“123.The prayer for a direction to refund of tax already paid by the petitioner also cannot be countenanced as these petitioners are liable to tax. Therefore, wherever the Orders-in-Original have been passed, the respective petitioners are given liberty to file statutory appeal before the Appellate Authority subject to the compliance of the other requirements of pre-deposit the amount as is contemplated under Section 35F of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994, within a period of thirty (30) days from the date of receipt of a copy of this order.*

124.Subject to the above, the appeals to be filed by the respective petitioners shall be entertained by the Appellate Authority before whom the appeals are to be filed by the respective petitioners within such time. If such appeals are filed within such time, the Appellate Authority shall pass appropriate orders in the proposed appeals to be filed by the respective petitioners on merits and in accordance with law without reference to the limitation."

3.Mr.N.Dilip Kumar, learned Standing Counsel takes notice for the respondents and submits that the above order of the Division Bench of Principal Seat of this Court has been confirmed by the Honourable Supreme Court in Special Leave to Appeal (C) Nos.7181 to 7199 of 2023, dated 10.04.2023.

4.In view of the above, this writ petition is disposed of with a liberty to the petitioner to file a statutory appeal before the Appellate Authority concerned within a period of four weeks from the date of receipt of a copy of this order and on such filing of an appeal, the same shall be considered by the Appellate Authority as expeditiously as possible in the light of the above orders passed by this Court and the Honourable Supreme Court. No costs. Consequently, connected Miscellaneous petition is closed.

21.03.2024

NCC: Yes/No
Index:Yes
Internet:Yes
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Note: Issue order copy on **26.03.2024.**

To

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Madurai II Division,
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VP Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002.

B.PUGALENDHI, J.

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Order made in
W.P(MD)No.6983 of 2024 and
WMP(MD) No.6502 of 2024

21.03.2024