BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.1219 of 2024
and
W.M.P.(MD)Nos.1230 and 1233 of 2024

Mohammed Kani Razak,
PWD Contractor
S/o.Mohammed Kani,
No.8/10, Thidai Pallivasal Street,
Mudukulathur,
Ramanathapuram – 623 704. ... Petitioner

versus

1. The Deputy Commissioner of CGST
and Central Excise,
Madurai – II Division,
No.5, V.P.Rathinasamy,
Nadar Road, Bibikulam,
Madurai – 625 002.

2. The Superintendent,
O/o. The Superintendent of GST & Central Excise,
Madurai – II Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent pertaining to the impugned assessment order to DIN: 20220359XO000000C2D7 dated 08.03.2022-File No.C.No.IV/09/175/2020ADJN and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.N.Dilip Kumar, Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned assessment order, dated 08.03.2022 passed by the first respondent imposing service tax and penalty on the petitioner.

2. The learned counsel appearing for the petitioner submits that the petitioner was doing contract in Public Works Department and the services provided to the Government by way of construction,

commission, installation and completion etc., were exempted by virtue of Notification No.25/2012. However, the same was withdrawn vide the Notification No.6/2015-Service Tax dated 01.03.2015 with effect from 01.04.2015. The respondents have issued a show cause notice dated 28.04.2021 demanding service tax from the petitioner for the period from 01.04.2015 to 30.06.2017 and the petitioner has also given a reply on 01.12.2022. However, the first respondent, without providing personal hearing to the petitioner, has passed the impugned assessment order imposing service tax and penalty on the petitioner.

3. The learned Standing Counsel appearing for the respondents submits that as against the impugned assessment order passed by the first respondent, the petitioner is having an appeal remedy under Section 85 of Finance Act and the appeal ought to have been filed within a period of three months from the date on which the said decision or order is communicated to such person. He further submits that this Court, in a similar case, in W.P.No.13687 of 2023, by order

dated 28.04.2023, granted liberty to the petitioner therein to file an appeal and the same shall be entertained by the appellate authority without insisting the limitation period.

4. In the light of the above, this Writ Petition is disposed of, with liberty to the petitioner to file an appeal before the Appellate Authority, within a period of two weeks from the date of receipt of a copy of this order. The appellate authority shall entertain the same without insisting any limitation. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.02.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

1. The Deputy Commissioner of CGST
   and Central Excise,
   Madurai – II Division,
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   Madurai – 625 002.

2. The Superintendent,
   O/o. The Superintendent of GST & Central Excise,
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   No.5, V.P.Rathinasamy Nadar Road,
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B.PUGALENDHI, J.

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W.P.(MD)No.1219 of 2024

02.02.2024