BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.1763 of 2021
and
W.M.P.(MD) Nos.1500 & 1501 of 2021 and 5315 of 2023

R.Chinnathambi ... Petitioner

Vs.

1.The Government of India,
Rep. by its Secretary,
Ministry of Finance,
New Delhi – 110 001.

2.Additional Director General,
DGGI, Coimbatore Zonal Unit,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
1 55-L Lakshmanan Street,
Behind Ukkadam Bus Stand, Ukkadam,
Coimbatore 641 001, Coimbatore.

3.M/s.V.O.Chidambaranar Port Trust Ltd.,
Rep. by its Chairman,
V.O.C. Port, Toothukudi.

4.M/s.Kamarajar Port Trust Ltd.,
Rep. by its Chairman,
Ennore, Chennai.

5.M/s.Indian Port Rail Corporation Ltd.,
Rep. by its Power Agent, M/s.RITES Ltd.,
Rep. by its General Manager (P),
Scope Minor, Laxmi Nagar,
Delhi – 110 092.

6.M/s.RITES Ltd.,
Rep. by its General Manager,
45, Fair Field Layout,
Race Course Road,
Bengaluru – 560 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the second respondent relating to the impugned order, namely the Show Cause cum Demand Notice No.45/2020-ST issued by him in his F.No.INV/DGGI/CoZU/T/30/2019-ST / OR No.-39/2019-ST/ DIN – 202012DSS30000888BA7 dated 23.12.2020 demanding service tax from the petitioner in so far as the works contract service rendered by the petitioner to the respondents 3 to 6 are concerned during the period from 01.04.2015 to 30.06.2017 and consequently to direct the respondents 1 and 2 to reimburse the service tax of Rs.20.00 lakhs (Rupees Twenty lakhs) already paid by the petitioner as service tax to the first respondent along with interest at appropriate rate as may be fixed by this Court from 21.03.2019 the date of payment to the date of receipt of the same by the petitioners from the respondents 1 and 2, or alternatively, in the event of this Court upholding the impugned order, for issuance of a Writ of Mandamus directing the respondents 3 to 6 to reimburse the service tax of Rs.20.00 lakhs (Rupees Twenty lakhs) already paid by the petitioner as service tax in Challan dated 21.03.2019 along with interest at appropriate rate as may be fixed by this Court from 21.03.2019 to the date of receipt of the same by the petitioner and also to direct the respondents 3 to 6 to pay to the petitioner or directly to the second respondent, the further service tax to be paid to the said works contract services rendered to them by the petitioner during the period from 01.04.2015 to 30.06.2017 and the interest, including the penal one if any thereon, that may be demanded by the respondents 1 and 2 therefor within a time as may be fixed by this Court.

For Petitioner	: Mr.N.Subramaniyan
For R1	: Mr.K.Govindarajan Deputy Solicitor General of India
For R2	: Mr.N.Dilip Kumar Standing Counsel
For R3	: No appearance
For R4	: Mr.K.Govindarajan Deputy Solicitor General of India assisted by Mr.Krishna Ravindran
For R6	: Mr.R.D.Ganesan

O R D E R

The petitioner has challenged the impugned Show Cause cum Demand Notice No.45/2020-ST dated 23.12.2020 bearing reference F.No.INV/DGGI/CoZU/T/30/2019-ST issued by the second respondent.

2. By the impugned Show Cause cum Demand Notice, the petitioner has been called upon to show cause as to why,

i. an amount of Rs.9,37,17,910/- (Nine crores thirty seven lakhs and seventeen thousand and nine hundred and ten rupees) [Service Tax Rs. 8,89,16,444/-, Swachh Bharat Cess -Rs. 31,75,587/- and Krishi Kalyan Cess Rs. 16,25,879/-] payable as detailed in para 10.7 of this Show Cause Notice for the period 2015-16 to 2017-18 (upto June 2017), should not be demanded and recovered from him under proviso to Section 73(1) of the Finance Act, 1994;

ii. an amount of Rs. 26,85,451/- already paid by Shri R. Chinnathambi during the course of investigation should not be adjusted towards above demand;

iii. interest at the appropriate rates should not be demanded from him on the service tax amount demanded under Sl. No.(i) above under Section 75 of the Finance Act, 1994:

iv. penalty stipulated under Section 76 of the Act, should not be imposed on him for contravention of the provisions of Section 68 of the Act and Rule 6 of Service Tax Rules;

v. penalty should not be imposed on him under section 77 (1) (c) of the Finance Act, 1994 for their failure to furnish the documents summoned under Section 83 of the Act read with Section 14 of the Central Excise Act, 1944;

vi. penalty should not be imposed on him under section 77 (2) of the Finance Act, 1994 for contravention of the provisions of Section 70 of the Act inasmuch as they did not correctly assess and declare the same in their ST-3 return;

vii. penalty should not be imposed on him under section 78 of the Finance Act, 1994 for suppression and contravention of the Act and the Rules with an intention to evade payment of service tax.

3. The petitioner has also been issued with Annexure to the said impugned Show Cause cum Demand Notice.

4. It is the specific case of the petitioner that the service provided by the petitioner to the third and fourth respondents on behalf of the fifth and sixth respondents by putting in rail linings, is specifically exempted in terms of Sl.No.14(a) to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 as amended by Notification No.6/2015-ST dated 01.03.2015. It is submitted that by the subsequent amendment, the exemption in Sl.No.14(a) has been partly amended by removing the exemption granted for airport and port services. However, the service provided by the petitioner to the third and fourth respondents on behalf of the fifth and sixth respondents for putting up rail linings still continued to be exempted. Despite the same, the second respondent has issued impugned Show Cause cum Demand Notice to the petitioner.

5. The learned counsel for the petitioner would further submit that the petitioner has also paid a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) in advance on 21.03.2019 pursuant to the notice bearing reference No.INV/DGGI/TRU/22/2018-MISC/742. It is submitted that in case the petitioner is liable to pay tax, the sixth respondent has to reimburse the tax that is payable by the petitioner for the service provided by the petitioner pursuant to the arrangement between the petitioner and fifth and sixth respondents. It is submitted that the petitioner unnecessarily is being harassed and therefore, the impugned Show Cause cum Demand Notice is liable to be quashed.

6. That apart, it is submitted that in the impugned Show Cause cum Demand Notice, the second respondent has come to a conclusion and therefore, the adjudication of the aforesaid Show Cause cum Demand Notice dated 23.12.2020 would be a mere empty formality and therefore, the impugned Show Cause cum Demand Notice dated 23.12.2020 is liable to be quashed.

7. Opposing the prayer, the learned Deputy Solicitor General of India for the first respondent would submit that this Writ Petition is

premature and is liable to be dismissed. It is submitted that the petitioner cannot preempt the adjudication proceedings by filing this Writ Petition. In this connection, he placed reliance on the following decisions:

i. **Union of India** Vs. **Hindalco Industries**, 2003 (153) E.L.T. 481 (SC).
ii. **M/s.Metal Weld Electrodes** Vs. **CESTAT, Chennai**, 2013 WLR 1041 (Madras high Court).
iii. **M/s.Nivaram Pharma Private Limited rep. by its Director Sardarmal M.Chordia, Madras** Vs. **The Customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras and others**, (2005) 2 MLJ 246 (DB),
iv. **United Bank of India** Vs. **Satyawati Tondon and others**, (2010) 8 SCC 110.
v. **Raj Kumar Shivhar** Vs. **Assistant Director, Directorate of Enforcement and another**, (2010) 4 SCC 772.

8. The learned counsel for the sixth respondent would submit that the fifth and sixth respondents have been unnecessarily impleaded in this Writ Petition. It is submitted that the parties are governed by the contract signed between them and therefore, this Writ Petition is devoid of merits and is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Deputy Solicitor General of India for the first respondent as also for the fourth respondent, learned Standing Counsel for the second respondent and the learned counsel for the sixth respondent.

10. In my view, this Writ Petition is premature and is therefore liable to be dismissed. The second respondent has issued the detailed Show Cause cum Demand Notice which may indicate the predisposition of mind in the said notice. The petitioner shall therefore file a detailed reply giving reason as to why the petitioner should not be held liable to pay the service tax for the service rendered by him by putting up the rail linings in the premises of the third and fourth respondents on behalf of the fifth and sixth respondents.

11. The impugned Show Cause cum Demand Notice is dated 23.12.2020. Considering the same, I direct the petitioner to file reply within a period of 30 days from the date of receipt of a copy of this order.

12. The second respondent is directed to adjudicate the Show Cause cum Demand Notice preferably within a period of 30 days thereafter. Needless to state, the petitioner shall be heard before passing the order and the orders to be passed will have to be strictly in compliance with the law.

13. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.04.2024

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

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Copy To:

1.The Secretary,
Ministry of Finance,
Government of India,
New Delhi – 110 001.

2.Additional Director General,
DGGI, Coimbatore Zonal Unit,
Directorate General of GST Intelligence,
Coimbatore Zonal Unit,
1 55-L Lakshmanan Street,

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M/s.V.O.Chidambaranar Port Trust Ltd.,
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4.The Chairman,
M/s.Kamarajar Port Trust Ltd.,
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C.SARAVANAN, J.

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