BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.6852 of 2024 and
WMP(MD) Nos.6411 & 6412 of 2024

Vishnuraj Jeyachandran ... Petitioner

Vs

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 of CGST & C.Excise,
Madurai North Range,
No.5, V.P.Rathnasamy 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 Certiorari, calling for the records in order in Original No.MAD-ST-ASC-29-2022, dated 06.01.2022 issued by the first respondent and quash the same as arbitrary, illegal and against principles of natural justice.

For Petitioner : Mr.N.Sudalaimuthu
For Respondents : Mr.N.Dilip Kumar
Standing Counsel

ORDER

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. The grievance of the petitioner is that the order impugned in this writ petitioner, demanding service tax along with penalty for the services executed by the petitioner, has been passed without issuing any show cause notice to the petitioner. Even the impugned order has been furnished to the petitioner on his request made on 03.02.2024, subsequent to the petitioner's Bank accounts were attached by the second respondent. The learned counsel further submits that even without providing any opportunity of personal hearing, the impugned order came to be passed by the respondents. Therefore, 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 petitions are closed.

21.03.2024

NCC: Yes/No
Index:Yes
Internet:Yes
vrn

Note: Issue order copy on **26.03.2024.**

To

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 of CGST & C.Excise,
Madurai North Range,
No.5, V.P.Rathnasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.6852 of 2024 and
WMP(MD) Nos.6411 & 6412 of 2024

21.03.2024