BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.08.2024

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THE HONOURABLE MR JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.7348 of 2024
and
W.M.P(MD)Nos.6761 and 6764 of 2024

APN Thirumana Mahal
Represented by its Proprietor A.Paramasivam
No.40, Deivegan Street,
Moogambigai Nagar,
Mela Kalkandar Kottai,
Tiruchirappali-620 011. ... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Ezhilagam Annexe, VI Floor,
Chepauk,
Chennai-600 005.

2.The Assistant Commissioner,
Golden Rock Zone,
Tiruchirappalli City Corporation
Trichy.

3.The Assistant Commissioner of GST & Central Excise,
Trichy -1 Division
No.1, Williams Road, Cantonment,
Trichy-620 001.

4.The Commissioner of Customs & Central Excise (Appeals),
O/o. the Commissioner of Customs & Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli – 620 001. ... Respondents

(R4 is suo motu impleaded vide order dated 16.08.2024 in W.P.(MD)No.7348 of 2024)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue a Writ of Certiorari, calling for the records in order in Original No.54/2023-ST dated 06.09.2023 on the file of the 3rd respondent and quash the same as illegal.

For Petitioner	: Mr.J.Prasanna Kumar
For R1	: Mr.R.Suresh Kumar Addl. Govt. Pleader
For R3 & R4	: Mr.R.Gowrishankar Central Govt. Standing Counsel

ORDER

This writ petition is filed challenging the impugned order dated 06.09.2023 passed by the third respondent demanding service tax for the period from April 2016 to June 2017 and imposing penalty.

2. It was submitted by the learned counsel for the petitioner that the petitioner was running a Kalyana Mandapam, registered as a Mandap Keeper under Section 69 of the Finance Act, 1964. It was submitted that Trichy Municipality floated a tender for a period of three years from 01.04.2013 to 31.03.2016 for collection of fees for bays in bus stand(bus stand entrance fee) at Trichy Central Bus Stand. That the above contract is covered under Sl.No. 39 to the Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

3. It was further submitted that the petitioner is a contractor of Municipal Corporation and renders service and issues fee receipts in the name of the local authority to the general public. The collection and maintenance work entrusted by the Municipality to the petitioner/contractor could not be termed as service. The impugned order levying tax is thus illegal and without jurisdiction.

4. To the contrary, it was submitted by the learned Central Government Standing Counsel for the third respondent that the petitioner's activity may not come within the ambit under Sl.No.39 to the Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

5. In view of the above submissions, this Court is of the view that the issue involves disputed question of fact, which requires detailed examination of facts, an exercise normally not undertaken under Article 226 of the Constitution of India.

6. At this stage, the learned counsel for the petitioner would seek liberty of this Court to file a statutory appeal.

7.The learned Central Government Standing Counsel for the third respondent would submit that the writ petition is filed beyond the statutory period and that this Court may direct the petitioner to pay 25% of the service tax amount, as in the matters arising under

GST Act and would place reliance on the order of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***, which was agreed to by the learned counsel for the petitioner.

8. Under these circumstances, the Appellate Authority namely, the Commissioner of Customs and Central Excise (Appeals), O/o. the Commissioner of Customs and Central Excise, No.1, Williams Road, Cantonment, Tiruchirappalli is *suo motu* impleaded as the fourth respondent in the Writ Petition.

9. Taking into account the above submissions, this Court is inclined to permit the petitioner to file statutory appeal before the Appellate Authority/fourth respondent together with the deposit of 25% of the service tax, within a period of six (6) weeks from the date of receipt of a copy of this order. On compliance of such condition, the Appellate Authority/fourth respondent shall

entertain the appeal by admitting the same without reference to the period of limitation and pass orders in accordance with law after affording reasonable opportunity of hearing to the petitioner.

10. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.08.2024

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

To
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O/o. the Commissioner of Customs & Central Excise,
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MOHAMMED SHAFFIQ, J.

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