BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.7618 of 2023
and
W.M.P.(MD)No.7095 of 2023

L.Subramanian ... Petitioner

Vs.

The Assistant Commissioner of GST
and Central Excise,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur - 613 007. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records in the order passed by the respondent in the Order-in-Original No.157/2022-ST, dated 30.12.2022 and quash the orders as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.N.Dilipkumar
Senior Standing Counsel

ORDER

The petitioner has challenged Order-in-Original No.157/2022-ST, dated 30.12.2022, on the ground that the respondent has wrongly invoked the larger period of limitation under Proviso to Section 73 of the Finance Act, 1994 and confirmed the demand.

2. It is further submitted that the impugned order proceeds on the assumption that the petitioner has suppressed the material fact by comparing the gross receipts declared in the income tax returns filed under Section 139 of the Income Tax Act and ST-3 returns filed under the provisions of the Finance Act, 1994 read with Services Tax Rules, 1994. He further submits that the petitioner has rendered services to several individuals and that the services provided to the individuals were exempted in terms of Serial No.14 of Mega Exemption Notification No. 25/2012-ST, dated 20.06.2012. It is therefore, submitted that the impugned order deserves to be quashed.

3. That apart, the respondent has disbelieved the oral contract between the petitioner and the petitioner's small clients for whom the petitioner has built single unit house and has produced declarations from the respective clients, which has however, been disbelieved by the respondent.

4. The learned Senior Standing Counsel for the respondent on the other hand would submit that there are several disputed questions of facts and therefore, this Writ Petition is liable to be dismissed. That apart, it is submitted that the petitioner has an alternate remedy under Section 85 of the Finance Act, 1994 before the Appellate Commissioner and therefore, the petitioner should be directed to work out the remedy before the Appellate Commissioner.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

6. In my view, even if the petitioner may have a case on merits, it is best left to be decided by the Appellate Authority under the hierarchy prescribed under the Finance Act, 1994.

7. The submissions made by the petitioner also indicate that there could be finer aspects of law, which may have to be settled in a case like the petitioner and therefore, it is best left to be decided by the authorities including the High Court in exercise of its appellate jurisdiction against the orders of the Tribunal, in case, the petitioner fails before the respondent as also before the Appellate Commissioner as also before the CESTAT.

8. In view of the above, this Writ Petition is disposed of by giving liberty to the petitioner to file a statutory appeal before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order. All the issues are left open including the issue relating to limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2024

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

To

The Assistant Commissioner of GST
and Central Excise,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur - 613 007.

C.SARAVANAN, J.

smn2

W.P.(MD) No.7618 of 2023

12.06.2024