BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18917 of 2022
and
W.M.P.(MD) Nos.13806 & 13807 of 2022

The Superintendent of Police,
Tirunelveli District,
Tirunelveli - 627 002. ... Petitioner

Vs.

1.Union of India,
Represented by its Secretary,
Ministry of Finance,
(Department of Revenue),
Room No.46, North Block,
New Delhi – 110 001.

2.The Commissioner of GST &
Central Excise (Appeals),
Coimbatore Circuit Office at Madurai,
Lal Bahadur Shashtri Marg,
C.R.Buildings, Madurai – 625 002.

3.The Assistant Commissioner of
CGST & Central Excise,
Tirunelveli Division,
2nd Floor, Central Revenue Building,
NGO 'A' Colony,
Tirunelveli – 627 007. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pursuant to the order passed by the second respondent vide Order-in-Appeal No.139/2019 dated 20.03.2019 and quashing the same and consequently declaring that the activities of the petitioner are outside the purview of the Union Levy of Service Tax as that of the Security Agencies Services under Section 65(105)(w) of Chapter V of the Finance Act, 1994 from inception and also directing the first respondent to issue suitable instruction to his subordinate officers not to propose, demand and/or levy Service Tax on the petitioner for the statutory service rendered under the provisions of the Tamil Nadu District Police Act, 1859, the Chennai Police Act, 1888 (Formerly the Madras City Police Act, 1888) and the relevant Government Orders issued by the Government of Tamil Nadu.

For Petitioner	: Mr.S.P.Maharajan Special Government Pleader
For R2 & R3	: Mr.N.Dilip Kumar Standing Counsel

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ORDER

The petitioner, Superintendent of Police, Tirunelveli District, has filed this Writ Petition challenging the impugned Order-in-Appeal No.139 of 2019 dated 20.03.2019 passed by the second respondent, wherein, the appeal of the petitioner against the Order-in-Original No.33/AC/ST/2018 dated 24.04.2018 passed by the third respondent has been dismissed.

2. The dispute relates to leviability of service tax on the service provided by the petitioner as a part of sovereign functions of the Government of Tamil Nadu. The petitioner deployed some of its staffs to the various banks and private financial institutions for transportation of cash from chest to the ATM centers for being uploaded in ATMs, on payment of charges.

3. The petitioner is aggrieved by the impugned Order-in-Appeal No. 139 of 2019 dated 20.03.2019 on the ground that issue is no longer *res integra* and is covered by the Circular No.89/7/2006-S.T., dated 18.12.2006 issued by the Central Board of Excise and Customs, wherein, it has been clarified as follows:-

> A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/ duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring

instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as **mandatory and statutory function**. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

4. It is submitted that under similar circumstances, the Tribunals have decided the issue in favour of the police department in the following cases:-

i. **Deputy Commissioner of Police, Jodhpur** Vs. **CCE & ST, Jaipur-II**, 2017 (48) STR 275 (Tri.-Del).
ii. **Mumbai Police** Vs. **CST**, 2017 TIOL (1067) (CESTAT-Mumbai).
iii. **Deputy Inspector General of Police** Vs. **CCE, Bhopal**, *vide* Final Order No.52286-52287/2017 dated 10.03.2017 (Tri.-Delhi).
iv. **The Superintendent of Police** Vs. **C.C.E.S.T., Bhavnagar**, *vide* Final Order No.A/11428/2018 dated 13.07.2018 (CESTAT-Ahmedabad).

5. It is submitted that the view in the above cases has been followed by CESTAT in **West Zonal Bench at Ahmedabad in Jamnagar Police** Vs. **C.C.E. &S.T.-Rajkot**, *vide* order dated 04.12.2023 in Service Tax Appeal No.13606 of 2014 – DB. He also relied on the decision of the CESTAT, New Delhi, Principal Bench, in **Superintendent of Police, S.P.Office, Satna, Burhanpur (M.P.)** Vs. **Commissioner of Central Goods and Service Tax, Excise and Customs**, *vide* order dated 12.12.2023 in Service Tax Appeal No.50390 of 2017. It is therefore submitted that the impugned order is liable to be set aside.

6. On the other hand, the learned Standing Counsel for the second and third respondents would submit that this Writ Petition is liable to be dismissed on account of the fact that the petitioner has an alternate remedy.

7. *Prima facie*, the issue is covered in favour of the petitioner in terms of the above-mentioned decisions of the Tribunals. However, it would not be prudent on my part to allow this Writ Petition straightaway as the petitioner has an alternate remedy. The issue on finer aspects of law has to be decided in a statutory appeal before the High Court or the Hon'ble Supreme Court, as the case may be.

8. Therefore, I am inclined to dispose of this Writ Petition by giving liberty to the petitioner to file statutory appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, within a period of 60 days from today, without awaiting for the certified copy of this order.

9. If such appeal is filed with the web copy of this order, the CESTAT, Chennai shall entertain the appeal and dispose of the same on

merits and in accordance with law. Needless to state, before passing the order, the Tribunal may examine the above decisions of the Tribunal cited by the learned Special Government Pleader for the petitioner and pass orders on merits, on its turn, as expeditiously as possible.

10. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.06.2024

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

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Copy To:

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C.SARAVANAN, J.

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