BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.9988 of 2024
and
W.M.P.(MD) Nos.9035 and 9037 of 2024

Alagar ... Petitioner

/vs./

1.The Assistant Commissioner of GST and Central Excise,
Office of the Deputy/Assistant Commissioner of GST and Central Excise,
Trichy I Division,
No.1, Williams Road,
Cantonment, Trichy 620 001.

2.The Branch Manager,
Union Bank of India,
Trichy Cantonment (555280),
No.16, Williams Road,
Kalairangam Complex,
Contonment,
Trichy 611 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st respondent in Order-in-Original No.299/2022-ST in file No. C.No.IV/19/200/2021-ST ADJN, dated 11.11.2022 , and quash the same as it is in gross violation of principles of natural justice, judicial discipline, is arbitrary, perverse and violate of Articles 14 and 19(1)(g) of the Constitution and consequently direct the 2nd Respondent to defreeze the petitioner's Account No. 333902010098632.

For Petitioner : Mr.S.Muthuvenkatraman

For R1 : Mr.R.Nandakumar
Senior Standing Counsel

ORDER

Mr.R.Nandakumar, learned Senior Standing Counsel takes notice for the first respondent.

2.The petitioner has challenged the impugned Order in Original No. 29/2022-ST dated 11.11.2022 bearing Ref.C.No.IV/19/200/2021-ST ADJN.

3.By the impugned order, the first respondent has confirmed the demand proposed in the show cause notice bearing C.No.IV/19/06/2021-ST ADJN in

DIN.No.20211059XN010061616A dated 20.10.2021. Operative portion of the impugned order reads as under:-

15. It is evident that the said amount of the service was not reported to the Service Tax Department, with clear intention to evade Service Tax. The assessee had suppressed the receipt of gross amount received by them under the taxable services in their Service Tax Returns, by non-compliance of the obligations cast upon them by the statutory provisions. If not the inputs received from Central Board of Direct Taxes, Government of India, indicating that there is difference between Gross value of Services declared by the assessee in Income Tax returns and Service Tax returns (ST-3) for the financial years 2016-17, the suppression of Facts would not have come to light. The assessee has not filed any reply to the notice and didn't appear in person but having declared to the income tax department, I find that the assessee voluntarily avoids his liability by such absence. It, therefore, clearly evident that there is willful suppression of fact, with clear intent to evade payment of service tax and hence I find that the extended period of limitation as provided under proviso to Section 73(1) of the Finance Act, 1994 has been rightly invoked in the instant case.

(ii) I demand appropriate interest on the Service Tax liability demanded at Sl. No. (i) from from M/s ALAGAR, Trichy under Section 75 of the Finance Act, 1994;

(iii) I impose a penalty of **Rs.17,47,970/- (Rupees Seventeen Lakh Forty-Seven Thousand Nine Hundred Seventy Only)** on the assessee under the provisions of section 78(1) of the Finance Act, 1994;

(iv) M/s ALAGAR, Trichy are informed that the penalty payable under Section 78 of the Finance Act, 1994 shall be 25% of the Service Tax amount determined as in Sl. No. (i) above, if the Service Tax as determined under Sl. No. (i) and interest as confirmed in Sl. No. (ii) above, along with the reduced penalty amount is paid within a period of 30 (Thirty) days of the date of receipt of the Order-in-Original, in terms of the second and third proviso to Section 78 of the Finance Act, 1994.

v) I impose a Penalty Rs.10,000/- on the assessee under the provisions of section 77(1)(c) of the Finance Act, 1994 for non-production of documents.

vi) I impose a Penalty of Rs.10,000/- under the provisions of section 77(2) of the Finance Act, 1994 read with Section 70 of the Finance Act, 1994 for non-filing of periodical ST-3 returns pertaining to the period from April, 2016 to June 2017.

VIRUTHPATTIYANPATTY, F KEELAYUR, MANAPARAI, TRICHY-621312.

ORDER

(i) I confirm the demand of Service Tax of Rs. **17,47,970/- (including Cess) (Rupees Seventeen Lakh Forty Seven Thousand Nine Hundred Seventy Only)** on M/s ALAGAR, Trichy for **the period from April 2015 to June, 2017** under proviso to Section 73 (1) of the Finance Act, 1994

(ii) I demand appropriate interest on the Service Tax liability demanded at Sl. No. (i) from from M/s ALAGAR, Trichy under Section 75 of the Finance Act, 1994;

(iii) I impose a penalty of **Rs.17,47,970/- (Rupees Seventeen Lakh Forty-Seven Thousand Nine Hundred Seventy Only)** on the assessee under the provisions of section 78(1) of the Finance Act, 1994;

(iv) M/s ALAGAR, Trichy are informed that the penalty payable under Section 78 of the Finance Act, 1994 shall be 25% of the Service Tax amount determined as in Sl. No. (i) above, if the Service Tax as determined under Sl. No. (i) and interest as confirmed in Sl. No. (ii) above, along with the reduced penalty amount is paid within a period of 30 (Thirty) days of the date of receipt of the Order-in-Original, in terms of the second and third proviso to Section 78 of the Finance Act, 1994.

v) I impose a Penalty Rs.10,000/- on the assessee under the provisions of section 77(1)(c) of the Finance Act, 1994 for non-production of documents.

vi) I impose a Penalty of Rs.10,000/- under the provisions of section 77(2) of the Finance Act, 1994 read with Section 70 of the Finance Act, 1994 for non-filing of periodical ST-3 returns pertaining to the period from April, 2016 to June 2017.

4.Reading of the impugned order reveal that the petitioner has not replied to the show cause notice bearing C.No.IV/19/06/2021-ST ADJN in DIN.No. 20211059XN010061616A dated 20.10.2021. It is informed that the first respondent has also recovered a sum of Rs.2,77,700/- from the petitioner's bank account on 15.04.2024.

5.Be that as it may, the petitioner is directed to pay 10% of the disputed tax additionally over and above of Rs.2,77,700/-, which was purportedly recovered on 15.04.2024. The first respondent is directed to verify whether the aforesaid amount has been recovered from the petitioner’s account maintained with the second respondent bank. If so, the petitioner may be given a further opportunity of giving a reply within a period of 30 days from the date of receipt of a copy of this order. The impugned order, which stands quashed, shall be treated as corrigendum to the show cause notice bearing C.No.IV/19/06/2021-ST ADJN in DIN.No.20211059XN010061616A dated 20.10.2021 issued to the petitioner. The first respondent shall pass a speaking order on merits and in accordance with law within a period of 60 days thereafter. It is needless to state that the petitioner shall be heard before fresh order is passed. Subject to the petitioner paying 10% of the disputed tax, the bank account of the petitioner shall be de-freezed by the first respondent.

6.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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24.04.2024

C.SARAVANAN, J.

mm

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