BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2024**

CORAM:

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

W.P.(MD) No.13006 of 2024
and
W.M.P.(MD) Nos.11544 and 11545 of 2024

G.Arun ... Petitioner

/vs./

1.The Additional Commissioner,
Office of the Commissioner of Central Excise,
Central Revenue Building,
No.4, Lal Bhahadur Shastri Road,
Bibikulam,
Madurai 625 002.

2.The Superintendent of CGST & Central Excise,
Ramnad Range, Madurai -II Division,
1st Floor, Bharathi Nagar,
Ramanathapuram 623 503.

3.The Commissioner of Central Excise,
Central Revenue Building,
No.4, Lal Bahadur Shastri Road,
Bibikulam, Madurai 625 002
(R3 has been suo motu impleaded vide order dated 20.06.2024) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned exparte order passed by the 1st respondent vide proceedings C.No.V/ST/15/38/2013-Adjn dated 28.11.2014 and the consequential recovery notice issued by the 2nd respondent in his proceedings vide O.C.No.11/2024 dated 09.01.2024 and set aside the same and to quash the same as illegal and consequently direct the 1st respondent to follow the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai vide proceedings Appeal No.41753 to 41755 of 2019 dated 12.12.2019.

For Petitioner : M/s.T.Sathya Selvi

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition against the impugned Order in Original No.MAD-CEX-000-ADC-30-14 dated 28.11.2014.

2.By the impugned order, the first respondent has confirmed the demand proposed in the show cause notice No.48/2013 dated 23.10.2023. Operative portion of the impugned order reads as under:

ORDER

(i) I confirm an amount of **Rs.17,63,496/- (Rupees Seventeen lakhs sixty three thousand four hundred and ninety six only)** (Service tax of Rs. 17,12,133/- Education Cess of Rs. 34,242/- and Secondary and Higher Education Cess of Rs. 17,121/-) on the noticee under Section 73(2) of the Act, being the Service Tax not paid during the periods 2008-09 to 2012-13 under the categories of Business Auxiliary Services and "Erection, Commissioning or Installation Service.

(ii) I also demand interest from the noticee under Section 75 of the Act on the amount confirmed above for the period from the due date for payment till the actual date of payment of service tax;

(iii) I impose a penalty of **Rs.10,000/-** (Rupees Ten Thousand) or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance under **Section** 77 (1) (c) (i) of the act inasmuch as the noticee for failure to furnish information when called for by Central Excise officer.

(iv) I impose a penalty of **Rs.10,000/-** (Rupees Ten Thousand) or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance under **Section** 77(1) (c) (ii) of the act inasmuch as the noticee for failure to produce the documents when called for by Central Excise officer

(v) I impose a penalty of **Rs.10,000/-** (Rupees Ten Thousand) or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance under **Section** 77 (1) (c) (iii) of the act inasmuch as the noticee for failure to failure to appear before the Central Excise Officer, when issued with Summons.

(vi) I impose a penalty of **Rs.10,000/-** (Rupees Ten Thousand) under **Section** 77(2) of the act inasmuch as the noticee had not filed the ST3 returns within the due dates for the period 2008-09 to 2012-13.

(vii) I impose a penalty of **Rs.17,63,496/- (Rupees Seventeen lakhs sixty three thousand four hundred and ninety six only)** under **Section 78** of the Act inasmuch as the assessee had suppressed the fact of rendering a taxable service with intent to evade payment of service tax. The penalty shall stand restricted to **25%** of **Rs.17,63,496/-** in terms of first proviso to **Section 78** of the Act provided the Service Tax along with interest and 25% of the penalty is **paid within 30 days** from the date of communication of this order.

3.The case of the petitioner is that the petitioner has closed his business long before and was unaware of the fact that the impugned order had been passed as early as 28.11.2014.

4.That apart, the learned counsel for the petitioner would submit that the issue is now covered in favour of the petitioner in terms of the decision of the CESTAT, Chennai in ST/Appeal Nos.42786 of 2014, 41426 of 2015 and 40756 of 2016 vide final order Nos.41753-41755/2019 dated 12.12.2019. Hence, he prays that the impugned order be quashed.

5.On a specific query as to how the petitioner came to know about the impugned order, which came to be passed on 28.11.2014, in 2024, it is informed by the learned counsel for the petitioner that the respondents have attached the bank account of the petitioner.

6.It is further submitted that the petitioner was under the impression that in view of the decision rendered in the above case, the demand would have been dropped *suo motu* by the Department.

7.On the other hand, the learned Senior Standing Counsel for the respondents would submit that the writ petition is liable to be dismissed on account of latches, in view of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

8.He would submit that the appeal will also be time barred in terms of the decision of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur*** reported in ***2008 (221) E.L.T. 163 (S.C).***

9.That apart, it is submitted that it is unlikely that the petitioner would not have received the impugned order in 2014, as the petitioner had given the address in the reply statement dated 22.10.2013 and it is to the same address to which both the show cause notice and the impugned orders were sent to the petitioner.

10.That apart, the petitioner has replied to the show cause notice for not proceeding further after the impugned order was passed. It is therefore submitted that the writ petition should be dismissed with cost.

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

12.It is noticed that part of the demand pertaining to the commission received by the petitioner from its principles may not be liable to pay tax in terms of the decision of the CESTAT, Chennai in ST/Appeal Nos.42786 of 2014, 41426 of 2015 and 40756 of 2016 vide final order Nos.41753-41755/2019 dated 12.12.2019. However, the fact remains that the petitioner may be liable to pay tax only installation charges.

13.Considering the above, to balance the interest of the parties, this Court is inclined to *suo motu* implead the Commissioner of Central Excise, Central Revenue Building, No.4, Lal Bahadur Shastri Road, Bibikulam, Madurai 625 002 as third respondent herein.

14.The petitioner shall file an appeal before the third respondent within a period of 30 days from the date of receipt of a copy of this order subject to the petitioner depositing 10% of the disputed tax towards pre-deposit.

15.Subject to the above, the appeal shall be entertained and disposed of by the third respondent without reference to the limitation. Subject to the pre-deposit of 10% as ordered above, the account of the petitioner shall be de-freezed. In case, there are sufficient amount available in the account as on date, the respondents may request the Bank to deduct the amount from the petitioner's account and leave the attachment.

16.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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20.06.2024

C.SARAVANAN, J.

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