BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.14623 of 2024
and
W.M.P(MD)Nos.12834 & 12835 of 2024

Chithaian Satheesh ... Petitioner

Vs.

1.The Commissioner of Central Excise,
(Presently Commissioner of GST),
Madurai Commissionerate,
Central Revenue Builders,
3rd Floor, No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

2.The Deputy Commissioner of Central Goods and
Services Tax & Central Excise,
Madurai II Division,
Central Revenue Builders,
3rd Floor, No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002.

3.The Superintendent of GST & Central Excise,
North Range,
Central Revenue Builders,
3rd Floor, No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned proceedings issued by the 2nd respondent in C.No.IV/09/27/2021 ST Adin dated 29.09.2022 and quash the same on the ground that the same is arbitrary, illegal and without legal basis and without jurisdiction consequently directing the Respondents to drop all further proceedings pertaining to the Impugned order, dated 29.09.2022.

For Petitioner	:	Mr.R.Aravindan
For Respondents	:	Mr.N.Dilipkumar Standing Counsel

ORDER

In this writ petition, the writ petitioner has challenged the impugned Order in Original No.MAD-ST-ASC-143-2022 from file No.C.No.IV/09/27/2021 ST Adjn, dated 29.09.2022. By the impugned order, the demand proposed in show cause notice No.27/2021 ST, dated 20.10.2021 has been confirmed on the petitioner.

2. The operative portion of the impugned order reads as under:

"(i) I confirm the demand of Service tax of Rs.8,09,232/- (Rupees Eight Lakh Nine Thousand Two Hundred and thirty two only for the period from 01-04-2015 to 30-06-2017 under sub-section (2) of Section 73 of the Act;

(ii) I confirm the demand of interest for the delayed payment of Service Tax from him at appropriate rates under Section 75 of the Finance Act, 1994 inasmuch as the Service Tax was not paid on its due dates;

(iii) I impose a penalty of Rs 8,09,232/- (Rupees Eight Lakh Nine Thousand Two Hundred and thirty two only on him under Section 78 of the Act;

(iv) I impose a penalty of Rs.10,000/- (Rupees Ten thousand only) on him under Section 77(1)(a) of the Act for his failure to take the service tax registration;

(v) I impose a penalty of Rs.10,000/- (Rupees Ten thousand only) on his under Section 77(2) of the Act for his failure to file the ST-3 returns within stipulated time;

(vi) I impose a penalty of Rs. 10,000/- (Rupees Ten thousand only) on him under Section 77(1)(c) of the Act for his failure to submit the documents called for by the departmernt

(vii) It is brought to the noticee, Shri Chithaian Satheesh 40 Kulamangalam Main Road Meenambalpuram Madurai that in terms of clause (ii) of the proviso to sub-section (1) of Section 78 of the Finance Act, 1994, where such service tax as determined under sub-section (2) of Section 73 and the interest payable thereon under Section 75 is paid within thirty days from the date of receipt of the order of the Central Excise Officer determining such service tax (this order in the present case), then the penalty payable shall be twenty five percent of the penalty imposed in the order, provided the benefit of reduced penalty under clause (ii) shall be available only if the

amount of such reduced penalty is also paid within thirty days from the date of receipt of this order."

3. The case of the petitioner is that the petitioner is a Civil Contractor, who is not liable to tax as the petitioner has not provided any services to the Government institutions and therefore, the withdrawal of exemption under Mega exemption Notification No.25/2012-ST, dated 20.06.2012 as amended by Notification No.6/2015-ST, dated 01.03.2015 would not apply to the petitioner. It is further submitted that the impugned order has been passed by comparing the profit and loss account of the petitioner filed for the purpose of Income Tax Act, 1961. Therefore, on this count also, the demand sustained in the impugned order, dated 29.09.2022 is liable to be quashed.

4. The learned counsel for the petitioner has also referred to the communication, dated 08.03.2024 of the Superintendent, North Range, Madurai i.e., 3rd respondent, wherein it is confirmed that the notices that preceded at the impugned order were not served on the petitioner. It is therefore submitted that there is a gross violation of principles of natural justice. Therefore, the impugned order be set aside.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

6. *Prima facie* the petitioner has been in default in complying with the requirements of Chapter V of the Finance Act, 1994, in as much as the petitioner has failed to obtain service tax registration. The fact that the petitioner has been providing civil contract service indicate that the petitioner was indeed liable to pay service tax.

7. The petitioner cannot blame the department as the petitioner had not given the correct particulars to the department for either issuance of the show cause notice or to the personal hearing notices thereafter or for communication of the impugned order. *Prima facie* the Court is of the view that the petitioner is indeed liable to pay service tax for the services provided to various private parties. Unless the petitioner is able to establish that the petitioner's turn-over was below the turn-over specified in the notifications exempting a service provided from payment of service tax, the demand cannot be questioned. The demand in the impugned order pertains to the period between 01.04.2016 to 30.06.2017. We are now in 2024. The interest will continue to mount on the

petitioner on the demands as assessment under the provisions of the Finance Act, 1994 and the Service Tax Rules, 1994 are based on self-assessed returns that were required to be filed under the provisions of the aforesaid Act and Rules. Under these circumstances, to balance the interest of the petitioner and the respondent and to reduce the exposure to further interest, following orders are passed:-

(i) The impugned Order in Original No.MAD-ST-ASC-143-2022 from file No.C.No.IV/09/27/2021 ST Adjn, dated 29.09.2022 confirming the demand in SCN.No.27/2021 ST, dated 20.10.2021 is quashed and the case is remitted back to the file of the 2nd respondent to pass fresh orders on merits and in accordance with law.

(ii) The impugned Order in Original No.MAD-ST-ASC-143-2022 from file No.C.No.IV/09/27/2021 ST Adjn, dated 29.09.2022 shall be treated as addendum to SCN.No.27/2021 ST, dated 20.10.2021.

(iii) The petitioner shall file a consolidated reply to SCN.No. 27/2021 ST, dated 20.10.2021 within a period of thirty (30) days from the date of receipt of copy of this order.

(iv) The petitioner shall deposit 20% of the disputed tax to the credit of the respondent department in two installments. It is also left open to the petitioner to pay further amount to reduce the eventual tax liability and the interest to the credit of respondent. In case the petitioner either fails to file a reply or pay the amount as directed, the respondents are at liberty to proceed against the petitioner as if the concessions given in this order has been revoked *sine die* and this writ petition was dismissed by this order.

8. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

04.07.2024

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

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To

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C.SARAVANAN, J.

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