BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.15382 of 2022
and
W.M.P.(MD)No.11029 of 2022

T.N.Karthikeyan ... Petitioner

Vs.

The Assistant Commissioner of
GST and Central Excise,
Trichy - I Division,
No.1, Williams Road, Cantonment,
Trichy - 620 001. ... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to the issuance of Order-in-Original No.216/2022-ST Adjn. dated 28.06.2022 by the respondent herein and quash the same.

For Petitioner : Mr.Suhrith Parthasarathy
for Mr.R.Murali

For Respondent : Mr.N.Dilipkumar
Senior Standing Counsel
Assisted by
Mr.K.Prabhu
Junior Standing Counsel

ORDER

This Writ Petition is disposed of after hearing the learned counsel for the petitioner and the learned Senior Standing counsel for the respondent.

2. The petitioner has challenged the impugned Order-in-Original No.216/2022-ST Adjn, dated 28.06.2022. By the impugned order, the respondent has confirmed a sum of Rs.14,86,477/- as the service tax payable by the petitioner for the period between 2015-2016 and 2017-2018 (upto June 2017). The respondent has also imposed interest under Section 75 of the Finance Act, 1994 and penalty under Sections 77 and 78 of the Finance Act, 1994.

3. The learned counsel for the petitioner would submit that the services provided by the petitioner is exempted in terms of Serial No.6 of Mega Exemption Notification No.25/2012, dated 20.06.2012.

4. On the other hand, this Writ Petition is opposed by the learned Senior Standing Counsel for the respondent that the Writ Petition is devoid of merits, as the petitioner has alternate remedy before the Appellate Commissioner.

5. In the counter affidavit, the respondent has also placed reliance on the decision of the Hon'ble Supreme Court in **CCE** vs. **Harichand Srigopal**, 2010 (260) E.L.T.3 (SC), stating that it is for the petitioner to prove that he is entitled for exemption. The respondent has also relied on the decision of the Hon'ble Supreme Court in **State of Jharkhand** vs. **Abhay Cement**, 139 STC 74 (SC), wherein it has been held as under:-

> *"It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."*

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

7. Though there is no merit in the submission of the learned counsel for the petitioner insofar as the claim for exemption under Serial No.6 of Mega Exemption Notification No.25/2012, dated 20.06.2012, with effect from 01.07.2012, the petitioner being an Advocate enrolled with the Bar Council of Tamil Nadu is not liable to pay service tax. Although, the service provided by the petitioner is taxable, it is taxable on reverse charge basis in terms of Notification No.30/2012, dated 20.06.2012. Therefore, there is no merit in the impugned order, although it proceeds on the assumption that the petitioner is not entitled to exemption under Mega Exemption Notification No.25/2012, dated 20.06.2012.

8. In the result, the impugned order dated 28.06.2022, stands quashed with liberty to the respondent to recover the proportionate tax from the person to whom the petitioner may have provided such service. It is open for the respondent to collect the details from the petitioner to recover the proportionate tax from the persons, who are liable to pay tax on reverse charge basis for the services rendered by the petitioner.

9. With the above liberty, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/ No **19.06.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

To

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

C.SARAVANAN, J.

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W.P.(MD) No.15382 of 2022

19.06.2024