BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14777 of 2024
and
W.M.P.(MD)Nos.12964 & 12965 of 2024

RPM Engineering Works & Contracts,
Represented by its Managing Partner Palani Murugan. ... Petitioner

Vs.

1.The Assistant Commissioner of GST and Central Excise,
O/o.the Deputy/Assistant Commissioner of GST and Central Excise,
Trichy I Division, No.1, Williams Road,
Contonment, Trichy – 620 001.

2.The Branch Manager,
Union Bank of India,
K.K.Nagar, Trichy – 620 021. ... 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 of the impugned order passed by the 1st respondent in Order-in-Original No.322/2022-ST dated 06.12.2022 and consequential impugned recovery notice in DIN No. 20240659XN0100322847, dated 11.06.2024 and quash the same as arbitrary and consequently direct the 2nd respondent to defreeze the petitioner's account No. 279011100000362.

For petitioner : Mr.S.Muthuvenkatraman
For respondents : Mr.N.Dilip Kumar
Senior Standing Counsel for R1
Mr.V.Balasubramanian
Standing Counsel for R2
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ORDER

Heard learned counsel for the petitioner, learned Senior Standing Counsel for the first respondent and learned Standing Counsel for the second respondent.

2. In this Writ Petition, the petitioner has challenging the impugned Order-in-Original No.322/2022-ST, bearing reference in C.No.IV/19/205/2021-ST ADJN dated 06.12.2022.

3. By the impugned order, the demand proposed in the Show Cause Notice in Circular No. IV/19/205/2021-ST ADJN in Show Cause Notice no.186/2021-AC-Div I, dated 20.10.2021 has been confirmed. Relevant portion of the impugned order reads as under:

ORDER

i. I confirm the demand of Service Tax of Rs.**6,77,182/- (including Cess) (Rupees Six Lakhs Seventy-Seven Thousand One Hundred and Eighty-Two only)** from M/S. Palani Murugan Managing Partner of RPM Engineering & Contracts, R.P.M. Engineering Works & Contracts, No.16-C, Vignesh Complex, Gandhi Road, Srirangam, Trichy 620 006 **for the period from April 2016 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 M/S. Palani Murugan Managing Partner of RPM Engineering & Contracts, R.P.M. Engineering Works & Contracts, No.16-C, Vignesh Complex, Gandhi Road, Srirangam, Trichy 620 006 under Section 75 of the Finance Act, 1994;

iii. I impose a penalty of **Rs. 6,77,182/-** on the assessee under the provisions of section 78 of the Finance Act, 1994; and M/S. Palani Murugan Managing Partner of RPM Engineering & Contracts, R.P.M. Engineering Works & Contracts, No.16-C, Vignesh Complex, Gandhi Road, Srirangam, Trichy 620 006 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.

iv. 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.

v. 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. It is case of the petitioner that the petitioner had met with an accident on 19.01.2017 and was in coma for few days and now recovered. However, he could not carry on the business and was unaware of the issuance of the impugned order or the show cause notice that preceded the impugned order.

5. It is submitted that the petitioner came to know only after the consequential recovery notice was issued by the first respondent dated 11.06.2024, whereby, the bank account of the petitioner kept with Union Bank of India/second respondent, has been attached.

6. The learned counsel for the petitioner submits that the petitioner may be given one opportunity to make submissions on merits as the petitioner has been suffered to unjust demands in the impugned order.

7. The above submissions are opposed by the learned Senior Standing Counsel for the first respondent, on the ground that the Writ Petition is hopelessly time barred and therefore, liable to be dismissed, on account of latches, in the light of the decision of the Hon'ble Supreme Court in the case of ***Assistant***

Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited reported in ***2020 SCC Online SC 440.***

8. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments as held by the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70*** and submitted that this Writ Petition is liable to be dismissed.

9. The learned counsel for the petitioner has placed reliance the decision rendered by this Court in ***W.P.(MD)No.9988 of 2024 dated 24.04.2024 in the case of Alagar vs.The Assistant Commissioner of GST and Central Excise, Trichy and another*** under the similar circumstances.

10. Having considered the submissions made by the learned counsel for the petitioner, learned Standing Senior Counsel for the first respondent and the learned Standing Counsel for the second respondent and considering the fact that the overwhelming records that indicates that the petitioner was hospitalized on

account of accident on 19.01.2017, the Court is of the view that the discretion can be exercised partly in favour of the petitioner by setting aside the impugned order and remitting the case back to the first respondent.

11. Under these circumstances, the impugned order stands quashed, subject to the petitioner depositing 25% of the disputed tax to the credit of the first respondent, as a condition for the first respondent to take up the case afresh and pass orders on merits.

12. The impugned order, which stands quashed, shall be treated as addendum to the Show Cause Notice No.186/2021-AC-Div I, dated 20.10.2021.

13. The petitioner shall deposit the aforesaid amount in cash together with the reply within a period of 30 days from the date of receipt of a copy of this order. The first respondent shall pass orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months thereafter.

14. Subject to the petitioner depositing the aforesaid amount or the first

respondent recovering the aforesaid amount from and out of the petitioner's Bank account, the attachment order shall stand left.

This Writ Petition is disposed of,with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

04.07.2024

C.SARAVANAN, J.

apd

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