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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A(MD)No.1218 of 2024
and
CMP(MD)No.9306 of 2024

Subramanian Chandran
Contractor ... Appellant

vs.

1. The Assistant Commissioner of Central
GST & Central Excise,
Dindigul II Division,
Race Course Road,
Dindigul-624005.

2. The Commissioner of Central GST &
Central Excise (Appeals),
Coimbatore at Madurai,
Central Revenue Buildings, Bibikulam,
Madurai-625002.

3. The Superintendent of CGST & Central Excise,
Theni Range, No.5A-1, First Floor, Vasavi Colony,
Palanichettipatti,
Theni-625531.

4. The Commissioner,
Chinnamanur Municipality,
Chinnamanur,
Theni District. ... Respondents

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Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 17.04.2024 made in W.P(MD)No.23668 of 2022.

For Appellant : Mr.S.Renganathan
For R1 to R3 : Mr.N.Dilip Kumar

JUDGMENT

(Judgment of the Court was made by **R.SURESH KUMAR, J.)**

This writ appeal has been directed against the order passed by the Writ Court dated 17.04.2024 made in W.P(MD)No.23668 of 2022.

2. The appellant was the writ petitioner who challenged the order in original passed by the respondent revenue dated 08.09.2022, where, service tax has been imposed on him for the service he has rendered to the 4th respondent i.e., Commissioner, Chinnamanur Municipality, Theni District.

3. It was the contention of the writ petitioner before the Writ Court that, before passing the order which was impugned before the Writ Court, no opportunity had been given and moreover, mega exemption notification dated 20.06.2012 was not taken into account before passing the order and also it was the contention of the appellant / writ petitioner before the Writ Court that, the service tax component has not been included in the tender conditions.

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Therefore, it cannot be recovered back from the person to whom the service has been rendered, here, it is the 4th respondent. Therefore, there has been no scope for the appellant / petitioner to get back the money and to pay as service tax to the revenue.

4. These are all the points which were raised before the Writ Court. However, without considering these aspects, since the writ petition has been disposed by the learned Judge through the impugned order, according to the learned counsel appearing for the appellant / petitioner, the present appeal has become necessitated.

5. We have heard Mr.N.Dilip Kumar, learned standing counsel appearing for the revenue, who would submit that, insofar as the service tax component is concerned, if it is not included or covered under the tender conditions, where, if the work is entrusted to a contractor who has undertaken the work against any Government or Governmental organization, even then, the Contractor after paying the service tax to the revenue, can collect the same from the employer, that is, the authority to whom such a service has been rendered. This was the legal position reiterated in the Division Bench judgment of this Court in the case of M/s. Raju Construction vs. The Government of India vide

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order dated 30.11.2022. Moreover, that order has been appealed to the Supreme Court by way of SLP which was also dismissed, thereby, the view taken by the Division Bench in the case of M/s. Raju Construction vs. The Government of India has been confirmed. Therefore, the learned standing counsel appearing for the revenue would submit that, it is for the appellant / petitioner to pay the service tax and can collect the same from the 4th respondent. In this context, the relief has been given by the learned Judge at paragraph 5 of the impugned order, whereby, Section 64(A) of the Sales of Goods Act, 1930, also can be invoked.

6. That apart, the learned standing counsel appearing for the revenue would also submit that, since the order impugned before the writ court was order in original, against which, statutory appeal can be preferred before the appellate authority. Therefore, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution itself is unwarranted and therefore, on that ground also, this appeal cannot be entertained and hence, the learned standing counsel seeks indulgence of this Court to dismiss the writ appeal.

7. We have considered the said submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

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8. As has been rightly pointed out by the learned standing counsel appearing for the revenue, the reason for rejecting the writ petition through the impugned order, has been given by the Writ Court, where, the binding precedent of the judgment of the Division Bench in M/s. Raju Construction vs. The Government of India has been taken note of as the same has been confirmed by the Supreme Court by dismissing the SLP. Also, the learned Judge has given further relief by making an observation that, still it is open to the appellant / petitioner to work out the remedy against the 4th respondent by applying the principle under Section 64(A) of the Sales of Goods Act, 1930.

9. Apart from all these aspects, since the order impugned before the Writ Court was an order in original passed by the assessing authority, as against which, an appeal would lie under the statute, the appellant / petitioner can very well invoke the appeal remedy, where, if at all he has got any grievance to agitate before the appellate authority to state that, some of the exemption notifications including mega exemption notification dated 20.06.2012, has not been taken into account by the revenue while passing the order in original, that issue also can be agitated and grounds could be raised before the appellate authority and if such appeal is filed, that can be considered by the appellate authority on merits and in accordance with law.

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10. In that view of the matter, we are not inclined to interfere with the order passed by the learned Judge which is impugned herein. Therefore, while dismissing this writ appeal, we give liberty to the appellant / writ petitioner to approach the appellate authority, where, what are all the grounds which are available for him can be canvassed before the appellate authority and if such an appeal is filed within a period of two weeks from the date of receipt of a copy of this judgment, the same shall be entertained by the appellate authority and be disposed of on merits and in accordance with law.

11. With these directions and observations, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) **(G.A.M., J.)**
24.07.2024

Index : Yes / No
Neutral Citation : Yes / No
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