BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2024**

CORAM:

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

W.P.(MD) No.17046 of 2021
and
W.M.P.(MD) No.13977 of 2021

G.Jeyasingh ... Petitioner

/vs./

1.The Joint Commissioner,
Office of the Joint Commissioner of CGST and Central Excise,
Central Revenue Building,
Tractor Road,
NGO A Colony,
Tirunelveli 627 007.

2.The Central Warehousing Corporation,
No.4, North Avenue, Srinagar Colony,
Saidapet,
Chennai 600 01.
(R2 has been impleaded vide order dated 26.06.2024)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of Order in Original No. 24/JC/ST/2018 dated 25/09/2018 and quash the same.

For Petitioner : Mr.S.Venkatachalam

For Respondent : Mr.R.Nandhakumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned Order in Original No.24/JC/ST/2018 dated 25.09.2018.

2.By the impugned order, the respondent has confirmed the demand proposed in the show cause notice No.05/JC/ST/2018 dated 21.04.2018 bearing Ref.C.No.V/ST/15/10/2018-Adjn.

3.Operative portion of the impugned order reads as under:

*"**ORDER***

i) I demand an amount of Rs.52,04,404/- (Rupees Fifty Two Lakh Four Thousand Four Hundred and Four only) being the Service Tax. Edu. cess and Sec. & Hr Edu. cess for the period from 01.07.2012 to 16.02.2014, under the Section 73(2) of the Finance Act, 1994 read with Section 72 of the Act;

ii) 1 demand appropriate interest under Section 75 of the Act on the amount demanded at Sl.No.(i) above;

iii) I impose penalty of Rs.79.000/- (Rupees Seventy Nine Thousand Only) under Section 77(1)(c) of the Act;

iv) I impose a penalty of Rs.40,000/-(Rupees Forty Thousand only) under Section 77(2) of the Finance Act, 1994;

v) I impose a penalty of Rs.52,04,404/-(Rupees Fifty Two Lakh Four Thousand Four Hundred and Four Only) under Section 78 of the Finance Act, 1994. If the amount of service tax as determined above along with interest thereon is paid within thirty days of the date of communication of this order, the amount of penalty liable to be paid shall be reduced to twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified."

4.*Ipso facto*, the petitioner has obtained a certificate from the Central Warehousing Corporation, for whom the petitioner propose to implead as second respondent in W.M.P.(MD) No.16445 of 2021 in W.P.(MD) No.17046 of 2021.

5.By letter dated 27.03.2019, the Central Warehousing Corporation has issued *omnibus* letter addressed to the Service Tax Commissionerate in respect of the services provided by the petitioner, which reads as under:

CENTRAL WAREHOUSING CORPORATION
(A Govt. of India Undertaking)

CWC/RO-CN/ST/2019/ 27/03/2019

TO
The concerned Authority
O/O The Service Tax Commissionerate
Jurisdiction concerned of
M/s Sri Poulthai Lorry Booking Office

Sir

Sub: Service Tax on rice in respect of M/s Poulthai Lorry Booking Office - Reg

Ref: Request letter of the concerned party dated 07/02/2019

Central Warehousing Corporation, a Government of India undertaking coming under Ministry of Food, Consumer Affairs and Public Distribution is providing Warehousing services and Cargo Handling services to Food Corporation of India. The stocks is meant for Public Distribution System is being [illegible] brought in warehouse preserved and stored in warehouse and issued to PDS Agency. For this purpose CWC appoints Handling and Transport Contractor duly following tendering process, to carry out the above work.

As requested by the Party, CWC RO Chennai, having warehouse located in Tamil Nadu, states that M/s Sri Poulthai Lorry Booking Office was engaged as the Handling and Transport Contractor to handle the stocks viz. rice & wheat of FCI at CW Nagercoil, CW Trichy, CW Tuticorin and CW Cuddalore.

CWC, as a provider of service to FCI has remitted service Tax to Government of India on the income charged on the cargo handling services rendered to FCI. The remittance of service tax for the period from 01/07/2012 to 30/11/2013 was paid on 30/12/2013 duly availing VCES scheme and paying interest @18% for the delayed remittance of service tax. For the period from 01st December 2013 to 15/02/2014, the service tax on cargo handling service for handling rice stock was remitted within due date under ST registration AAACC[illegible]ST001.

Hope the above information suffice the purpose requested.

Thanking you

Yours faithfully

(G Swaminathan)
AGM (ACCOUNTS)

Regional Office: No.4, North Avenue, Srinagar Colony, Saidapet, Chennai - 600015.
Phone [illegible] / 0350, Fax : [illegible], Email : [illegible], Visit us : [illegible]

6.The writ petition is opposed by the learned Senior Standing Counsel for the respondents on the ground that the writ petition is devoid of merits. It is submitted that the impugned order is dated 25.09.2018, whereas the writ petition has been filed only on 17.09.2021.

7.It is therefore submitted that the demand that was proposed in the show cause notice No.05/JC/ST/2018 dated 21.04.2018 bearing Ref.C.No.V/ST/15/10/2018-Adjn, which stood crystallized vide impugned order dated 25.09.2018 cannot be disturbed. It is submitted that at this distant point of time, neither a writ petition is maintainable on account of latches nor an appeal before the Appellate Commissioner can be permitted, in view of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

8.It is submitted that even otherwise the writ petition at this stage cannot be entertained in the light 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***.

9.Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and having considered the aforesaid letter dated 27.03.2019 issued by the Central

Warehousing Corporation/the second respondent herein, I am inclined to set aside the impugned order and remit the case back to the first respondent to pass a fresh order in the light of the aforesaid letter of the second respondent dated 27.03.2019.

10.It is noticed that the petitioner has also not given proper reply to the show cause notice issued to the petitioner earlier. Considering the same, the impugned order, which stands quashed, shall be treated as addendum to the show cause notice No.05/JC/ST/2018 dated 21.04.2018 bearing Ref.C.No.V/ST/15/10/2018-Adjn. The petitioner shall file a consolidated reply within a period of 30 days from the date of receipt of a copy of this order. The first respondent shall pass a fresh order on merits and in accordance with law within a period of 3 months thereafter.

11.Considering the fact that the petitioner has also been lackadaisical in approaching this Court, the petitioner shall deposit 25% of the disputed tax as condition for the first respondent to pass fresh orders on merits. It is made clear that unless the aforesaid amount is deposited within a period of 30 days from the date of receipt of a copy of this order by the petitioner in cash, the first respondent is at liberty to proceed against the petitioner in accordance with law.

12.With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

W.P.(MD) No.17046 of 2021

26.04.2024