BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18055 of 2024
and
W.M.P.(MD)Nos.15447 & 15449 of 2024

Tvl.Shanmugaiahthevar Madasamy ... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Additional Secretary,
Government of Tamil Nadu, Finance Department,
Secretariat, Fort Saint George,
Chennai – 600 009.

2.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort Saint George, Chennai – 600 009.

3.The Additional Chief Secretary to Government,
Finance Department, Secretariat,
Fort Saint George, Chennai – 600 009.

4.The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Pangal Building No.1,
Saidapet, Chennai – 600 015.

5.The Commissioner/Block Development Officer Block Panchayat,
181, Madurai Road Opp to New Bus Stand,
Tenkasi,
Tamil Nadu – 627 811.

6.The District Rural Development Agency,
Collectorate Building,
Tenkasi, Tamil Nadu – 627 811.

7.The Block Development Office Kadazanallur,
171D, Panchayat Union Main Road,
Municipal Area, Kadayanallur,
Tenkasi, Tamil Nadu – 627 751.

8.The State Tax Officer,
O/o the Commercial Tax Officer,
Sankarankovil, Tenkasi,
Tirunelveli, Tamil Nadu. ... 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 on the files of the 8th respondent herein in GSTN No.33AKSPM3613P1ZN/2022-23 dated 10.08.2023 and quash the same, and further direct the 5th to 7th respondent and his subordinates to implement and follow the G.O.Ms.No.114, Commercial Taxes and Registration (B1) Department dated 22.07.2022 and the instructions of the third respondent in Letter No.45114/Finance (Res-I)/2022-2, dated 18.12.2022 letter and spirit and further direct the respondents 5 to 7 to pay GST at the rate of 18% on the bills of the petitioner with effect from 18.07.2022 to the petitioner on the basis of the representation dated 26.06.2024.

For petitioner : M/s.Esairani Narasimman

For respondents : Mr.S.P.Maharajan
Special Government Pleader for R1, R3, R4 & R6
Mr.R.Suresh Kumar

Additional Government Pleader for R2 & R8
Mr.D.Sasikumar
Additional Government Pleader for R5 & R7
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ORDER

Heard learned counsel for the petitioner, learned Special Government Pleader for the respondents 1, 3, 4 & 6 and learned Additional Government Pleader for the respondents 2 & 8 and 5 &7.

2. The petitioner is a Government Contractor, who is before this Court against the impugned order dated 10.08.2023 passed by the eighth respondent for the assessment year 2022-23.

3. The impugned order has been passed without the petitioner participating in the show cause proceedings and without the petitioner giving reply to the notices in ASMT 10 dated 19.01.2023, DRC 01A dated 27.04.2024 and DRC 01 dated 19.06.2023. The petitioner has also not responded to the personal hearing notices dated 19.06.2023, 13.07.2023 and 26.07.2023.

4. It is the case of the petitioner that the petitioner has executed the work

contract prior to 13.07.2022, in respect of which, the payments were received subsequently, on which date the rate of tax for the service provider of the petitioner is fixed from 12% to 18%.

5. It is submitted that the Commissioner, Rural Development of Panchayat Raj Department has also called upon all the District Collectors to execute the supplementary contract, whereby, the Collectors were directed to enter into a supplementary contract with the contractor for the balance quantity of work to be executed on or after 18.07.2022, duly separating out the work executed upto 17.07.2022 at the rates quoted in the original agreement but adopting 12% or 18% of GST, whichever is applicable.

6. It is submitted that the respondents 2 to 6 observes the aforesaid communication of Commissioner dated 05.12.2022 bearing reference in Letter No.41303/2021/TU3, dated 05.12.2022.

7. In this connection, a reference is made to the following passage from the aforesaid communication:

> *"2. A supplemental agreement should be entered into with the Contractor by the office concerned for the balance quantities of works to be executed on or after 18.07.2022, duly separating out the quantities executed upto 17.07.2022, at the rates quoted by him in the original agreement but adopting 12% or 18% GST whichever is applicable. No modification in basic rates as quoted by the contractor should be permitted."*

8. This Writ Petition is opposed by the learned Special Government Pleader and Additional Government Pleader for the respondents, primarily on the ground that this Writ Petition is upheld and is, 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.***

9. I have considered the arguments advanced by the learned counsel for the petitioner, learned Special Government Pleader for the respondents 1, 3, 4 & 6 and learned Additional Government Pleader for the respondents 2 & 8 and 5 &7.

10. There is no dispute that the petitioner has paid all taxes as per the

Contract with the Government Department. The dispute pertains to the amount in differential tax on account of the revision of rate of tax in terms of Notification No.03/2022-Central Tax (Rate), dated 13.07.2022.

11. Under these circumstances, the Court is inclined to come to the rescue of the petitioner by quashing the impugned order passed by the first respondent and remitting the case back to the first respondent to pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of six months from today. The petitioner shall file a reply to the show cause notice that preceded the impugned order within a period of six weeks from today.

12. During the interregnum, it is open for the petitioner to enter into a supplementary contract for the works executed after the cut off date that is 17.07.2022 and for the tax amount recovered from the respondents 2 to 16 with whom the petitioner has entered into a contract and paid the same to the said tax towards the tax liability under the TNGST Act, 2017, CGST Act, 2017.

13. In view of the impugned order has been set aside, all recovery proceedings are to be kept in abeyance pending further orders.

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

Index : Yes / No
Internet : Yes / No
apd

01.08.2024

To

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C.SARAVANAN, J.

apd

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