BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18202 of 2022
and
W.M.P.(MD)Nos.13269 & 13270 of 2022

M/s.Reliance Engineering Services,
Represented by its Proprietor N.V.Pathy. ... Petitioner

Vs.

1.The Commissioner,
O/o.the Central Excise,
Central Revenue Building,
NGO 'A' Colony,
Tirunelveli – 627 007.

2.The Superintendent of GST and Central Excise,
Nagercoil Range,
Nagercoil,
Kanniyakumari.

3.Hindustan Construction Company,
Hincon House,
LBS Marg,
Virkoli (W),
Mumbai -400 083. ... 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 in Order-in-Original No.04/COMMR/ST/2016 dated 28.03.2016 on the file of the first respondent and quash the same as illegal, arbitrary and against the principles of natural justice and consequently, direct the respondents to redo the adjudication after affording the petitioner the opportunity to cross examine the third respondent and to pass appropriate order on the VCES-1 declaration dated 31.12.2023 filed by the petitioner.

For petitioner : Mr.J.Prasanna Kumar

For respondents : Mr.R.Nanda Kumar
Senior Panel Counsel for R1 & R2

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ORDER

The petitioner is before this Court long after the impugned Order-in-Original No.04/COMMR/ST/2016 dated 28.03.2016 bearing reference in C.No.V/ST/15/138/2014-Adjn, was passed by the first respondent/Commissioner.

2. By the impugned order, the demand proposed in show cause notice No. 20/COMMR/ST/2014 dated 26.12.2014 bearing reference in C.No.V/ST/138/2014-Adjn, has been confirmed. Operative portion of the impugned order reads as under:

ORDER

I confirm and demand to the extent of **Rs.81,72,156/-** (Rupees Eighty One Lakhs Seventy Two Thousand One Hundred and Fifty Six only) being the service tax due short declared by Shri N.V.Pathi, of M/s Reliance Engineering Service, under section 73(2) of the Finance Act, 1994.

I demand appropriate Interest under Section 75 of the Finance Act, 1994 on the amount of Service Tax as confirmed at para 23.01 above.

I impose a penalty of **Rs.81,72,156/-** (Rupees Eighty One Lakhs Seventy Two Thousand One Hundred and Fifty Six only) under section 78 of the Finance Act, 1994. However, as provided in proviso to Section 78 ibid, if **Service provider** pays the amount of service tax confirmed along with interest thereon, within thirty days from the date of communication of this order, the amount of penalty shall be **Twenty Five per cent** of the penalty imposed above.

3. The dispute pertains to the period between April 2008 to December 2012. Even prior to the impugned order, the petitioner appears to have attempted to settle the case under Voluntary Compliance Encouragement Scheme, 2013, under Section 107(1) of the Finance Act, 2013. After opting for the scheme, the petitioner failed to pay the amount. Thereafter, the statements were recorded and the aforesaid show cause notice was issued, which has culminitated in the impugned order.

4. The learned counsel for the petitioner submits that the petitioner is entitled to the exemption from the payment of Service Tax in terms of the Notification No.23/2009-ST, dated 07.07.2009 and thereafter, under Notification No.12/2012-ST, dated 01.07.2012.

5. It is submitted that the impugned order has wrongly denied the benefit of above Notifications as also failed to note that the petitioner was only engaged in fabrication of items for the construction work and therefore, exempted from the payment of Excise Duty in terms of Notification No.3/2005-Central Excise, dated 24.02.2005.

6. On behalf of the respondents, the learned Senior Panel Counsel for the respondents would submit that this Writ Petition is devoid of merits.

7. It is submitted that this Writ Petition is hopelessly liable to be dismissed on account of latches, in the light of the decision rendered by 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 at this stage, the petitioner cannot be relegated to file statutory appeal in view of the decision rendered 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. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents and after recording the submissions of the learned counsel for the petitioner that the petitioner is willing to comply with any reasonable terms, which the petitioner may be subjected to, the Court is inclined to set aside the impugned order passed by the first respondent and remit the case back to the first respondent to pass fresh orders on merits and in accordance with law subject to the petitioner depositing 50% of the disputed tax within a period of four months in four equated monthly installments.

10. The first respondent shall, thereafter, pass fresh orders on merits and in accordance with law. In case the petitioner fails to pay the amount within a period of four months in four equated monthly installments, the respondents are at liberty to proceed against the petitioner as that of the present order to set aside the impugned order, had never been passed and this Writ Petition was dismissed.

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

Index : Yes / No
Internet : Yes / No
apd

22.07.2024

C.SARAVANAN, J.

apd

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