BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

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

**W.P.(MD) Nos.19955 to 19957 of 2021**
**and**
**W.M.P.(MD) Nos.16657, 16655, 16660 and 16661 of 2021**

In W.P.(MD) No.19955 of 2021:

The Commissioner,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District. ... Petitioner

/vs./

1.The Additional Commissioner,
Office of the Commissioner of Central Excise,
Madurai, Central Revenue Building,
No.4, Lal Bagadur Sastri Road,
Bibikulam,
Madurai 625 002.

2.The Deputy Commissioner,
Deputy Commissioner of CGST and Central Excise,
Madurai II Division,
Madurai. ... 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 the impugned order passed by the 1st respondent in ORDER-IN-ORIGINAL No.09/2016 dated 16.08.2016 issued on 19.08.2016 and quash the same as illegal.

For Petitioner : Mr.A.Prasanna Rajadurai

For Respondents : No appearance

In W.P.(MD) No.19956 of 2021:

The Commissioner,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District. ... Petitioner

/vs./

1.The Additional Commissioner,
Office of the Commissioner of Central Excise,
Madurai, Central Revenue Building,
No.4, Lal Bagadur Sastri Road,
Bibikulam,
Madurai 625 002.

2.The Deputy Commissioner,
Deputy Commissioner of CGST and Central Excise,
Madurai II Division,
Madurai.

3.The Superintendent,
Office of the Assistant Commissioner of
Central Excise, Service Tax and Customs,

Central Revenue Building,
No.4, Lal Bagadur Sastri Road,
Bibikulam,
Madurai 625 002. ... 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 the impugned order passed by the third respondent in ORDER-IN-ORIGINAL No.16/2017 dated 01.07.2017 issued on 01.07.2017 and quash the same as illegal.

For Petitioner : Mr.A.Prasanna Rajadurai

For Respondents : No appearance

In W.P.(MD) No.19957 of 2021:

The Commissioner,
Paramakudi Municipality,
Paramakudi,
Ramanathapuram District. ... Petitioner

/vs./

1.The Additional Commissioner,
Office of the Commissioner of Central Excise,
Madurai, Central Revenue Building,
No.4, Lal Bagadur Sastri Road,
Bibikulam,
Madurai 625 002.

2.The Deputy Commissioner,
Deputy Commissioner of CGST and Central Excise,
Madurai II Division,
Madurai.

3.The Superintendent,
Office of the Assistant Commissioner of
Central Excise, Service Tax and Customs,
Central Revenue Building,
No.4, Lal Bagadur Sastri Road,
Bibikulam,
Madurai 625 002.

4.The Branch Manager,
State Bank of India,
Paramakudi 625 707,
Ramanathapuram District. ... 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 the impugned order passed by the second respondent dated 07.10.2021 and quash the same.

For Petitioner : Mr.A.Prasanna Rajadurai

For Respondents : No appearance

**COMMON ORDER**

In these writ petitions, the petitioner has challenged the impugned Orders in Original passed by the respondents in the respective writ petitions as detailed below:-

| S.No. | Writ Petition | Order in Original | Period | Respondent number |
|---|---|---|---|---|
| 1 | W.P.(MD) No.19955 of 2021 | MDU-ST-000-ADC-09-2016 dated 16.08.2016 | 2010-2014 | First respondent |
| 2 | W.P.(MD) No.19956 of 2021 | MDU-ST-SUP-16-2017 dated 01.07.2017 | 2014-2015 | Third respondent |
| 3 | W.P.(MD) No.19957 of 2021 | Form GST DRC -13 dated 07.10.2021 | 2010-11 to 2014-15 | Second respondent |

2.The challenge to the impugned orders passed by the respective respondents is on the strength of the order passed by this Court in a batch of writ petitions in ***W.P.Nos.8900 of 2018 and batch (Cuddalore Municipality, represented by Commissioner, Mr.K.Saravanan, Cuddalore and another Vs.***

***The Joint Commissioner of GST and Central Excise, Office of the Commissioner of GST and Central Excise, Tiruchirappalli 620 001 and others) rendered on 22.03.2021***.

3.There is no representation on behalf of the respondents. The respondents have also not filed any counter.

4.Be that as it may, the petitioner has made out a case, inasmuch as the issue is now squarely covered by the decision of this Court (*referred supra*). Relevant portion of the same reads as under:-

> *"52.Services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity, are not support services.*
>
> *53.In fact, in the Education Guide, list of activities such as grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under Section 18 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 and therefore such services are performed by CAG under the statue and cannot be performed by the business entity themselves and thus do not constitute support services.*
>
> *54.If the activity carried out by the Petitioner Municipalities are categorised as "Support Service", it cannot be held that there*

*was a provision of taxable service and such service was liable to tax under Section 66B of the Finance Act, 1994 as in force with effect from 01.07.2012.*

*55.However, for such support services, service tax was payable by the recipient of such service in terms of Rule 2(1)(d)(E) of the Service Tax Rules, 1994 as amended by notification No.36/2012-ST dated 20.6.2012 with effect from 1.17.2012.*

*56.For support service provided, the recipient was liable to pay tax on reverse charge basis under Rule 2(1)(d)(E) of the Service Tax Rules, 1994 as amended by notification No.36/2012-ST dated 20.06.2012 as in force from 01.07.2012.*

*57.Therefore, the Petitioner Municipalities can be held liable to pay service tax only for service specified in Sub-Clauses in (i), (ii) and (iii) of Clause (a) of Section 66D of the Finance Act, 1994.*

*58.As far as renting of immoveable property is concerned, though under Rule 2(1)(d)(E) of the Service Tax Rules, 1994, service tax is payable by the service provider, it has to be held that if such services are provided by a Government or Local Authority, they are exempted under Section 65D(1)(a) of the Finance Act,1994 as amended and as in force from 01.07.2012. Only ancillary service provided by a third party towards renting of immoveable property of a non-governmental or local body will be liable to pay service tax like any other service provider. Therefore, service tax is payable by the service provider himself.*

*59.That apart, it is seen that some of the services provided are also exempted under the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 vide Sl.Nos.38 and 39. They are reproduced below:-*

> *"38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms,*

*lavatories, urinal or toilets;*

*39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."*

*60.Thus, there is no jurisdiction in the impugned Show Cause Notices / Orders-in-Originals issued by the respondent. In the light of the above discussion, demand proposed in the impugned S.C.N.No. 04/2018 (ST) in C.No.V/ST/15/2/2018-ST. Adjn. Dated 07.03.2018 and demand confirmed in Order-in-original No.3/2017-ST in C.No.IV/09/04/2017-ST. Adjn. (RO OC No.100/2016) dated 24.03.2017 and Order-in-Original No.5/2018-ST in C.No.V/ST/15/21/2018-ST.Adj. dated 06.04.2018 are liable to be quashed and are accordingly quashed.*

*61.In the result,*

*i. W.P.No.3969 of 2018 as mentioned above is dismissed as infructuous.*

*ii. W.P.No.8900 of 2018, W.P.No.31799 of 2017 and W.P.No. 12489 of 2007 are allowed.*

*iii. No. Cost. Consequently, connected Miscellaneous Petitions are closed."*

5.Therefore the impugned orders are set aside and the case is remitted back to the respective respondents to pass *de novo* order in line with the order passed by this Court in W.P.Nos.8900 of 2018 and batch (***Cuddalore Municipality,***

***represented by Commissioner, Mr.K.Saravanan, Cuddalore and another Vs. The Joint Commissioner of GST and Central Excise, Office of the Commissioner of GST and Central Excise, Tiruchirappalli 620 001 and others***) rendered on 22.03.2021. Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**08.04.2024**

Index : Yes / No
Internet : Yes / No
mm

**C.SARAVANAN, J.**

mm

**W.P.(MD) Nos.19955 to 19957 of 2021**

**08.04.2024**