BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.20246 of 2024
and
W.M.P(MD)Nos.17178 & 17179 of 2024

M/s.G.Tech Services,
Represented by its Partner,
S.Roseline Mary. ... Petitioner

Vs.

Deputy Commissioner of GST &
Central Excise,
Trichy I Division,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in Order in Original No.26/2022-ST, dated 28.02.2022 and quash the same as illegal and not in accordance with law and consequently direct the respondent to conduct fresh assessment proceedings after providing a reasonable opportunity of hearing to the petitioner in accordance with law and pass such further or other orders as this Court.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.R.Gowrishankar
Senior Standing Counsel

ORDER

The present writ petition is filed challenging the impugned order issued by the respondent in Order in Original No.26/2022-ST, dated 28.02.2022.

2. The impugned order is challenged on the premise that levying service tax on the difference between the gross value of services declared by the petitioner vis-a-vis the income tax return for the financial years 2015-2016 and 2016-2017 representing a sum of Rs.86,45,341/- and Rs.1,13,71,640/- for the above period respectively, is arbitrary and without jurisdiction.

3. It is submitted by the learned Counsel for the petitioner that returns of the income tax cannot be the basis for levy of service tax and the burden is on the respondent to demonstrate that the consideration is in respect of taxable services rendered. It is submitted by the petitioner that apart from the first notice, which is dated 25.01.2021 it has not been served with any of the subsequent notices and was thus unable to put forth their case.

4. The learned Senior Standing Counsel for the respondent on the other hand would submit that the impugned order is dated 28.02.2022 and the writ petition is filed well after the statutory period of limitation prescribed for filing an appeal and the question as to whether there is a valid service or not are essentially questions of fact. He would submit that the petitioner may be put on terms and that the issue would be re-considered.

5. Considering the submissions made by both the parties and as agreed to by both the parties, this Court is inclined to remit the matter back to the respondent authority and one final opportunity may be granted to the petitioner to demonstrate that the levy of tax on the differential amount between the income tax return and that return under the service tax do not relate to services rendered.

6. In view thereof, the impugned order is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections along with supporting documents/material within a period of six (6) weeks from the date of receipt of a copy of this order. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or the objections are not filed within the stipulated period, i.e., two weeks and four weeks from the date of receipt of a copy of this order respectively, the impugned order of assessment shall stand revived. It is submitted that there is bank attachment and the respondent authorities shall lift the bank attachment forthwith once the 25% is paid.

7. The writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

27.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Deputy Commissioner of GST &
Central Excise,
Trichy I Division,
No.1, Williams Road,
Cantonment,
Tiruchirappalli-620 001.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.20246 of 2024

27.08.2024