BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.(MD)No.20937 of 2024**
**and**
**W.M.P.(MD)Nos.17711 and 17712 of 2024**

Mohanraj ... Petitioner

Vs.

1.The Assistant Commissioner of GST & Central Excise,
Trichy II Division,
Trichy.

2.The Tahsildar,
Paramasivapuram Lalgudi,
Tiruchirappalli – 621 601.

3.The Chief Administrative Officer,
Chennai Medical College & Research Centre (SRM),
Trichy – Chennai Bye Pass Road,
Irungallur Village, Mannachanallur Taluk,
Trichy.

4.The Manager,
City Union Bank Limited,
Cantonment Branch,
Trichy. ... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling upon the records culminated in the impugned order dated 28.02.2022 bearing File

No.GEXCOM/ADJN/ST/JC/34/2021-CGST on the file of the first respondent and quash the same as illegal, null and void, ultra vires without jurisdiction and without authority.

For Petitioner : Mr.H.Ramachandran

For R-1 : Mr.R.Nandhakumar
CGSC

For R-2 : Mr.R.Suresh Kumar
Additional Government Pleader

**O R D E R**

This Writ Petition has been filed challenging the impugned order dated 28.02.2022, on the premise that the petitioner who had rendered service in terms of Section 65B (44) read with Section 65 B (51) of the Finance Act, has wilfully suppressed to report the receipts of gross amount to Service Tax Department with an intention to evade tax.

2. The impugned order was passed on the premise that the service tax that was short paid for the period 2015-2016 was reckoned by taking the difference in gross value between the Income Tax returns and Service Tax returns (ST-3). While analyzing the same, it was found that the petitioner has wilfully suppressed a sum of Rs.52,08,186/- representing taxable value which is liable to be taxed at the rate of 14.5% which works out to Rs.7,55,187/-. The impugned order also proceeds to levy cess and consequential interest and penalty.

3. The learned counsel for the petitioner would submit that the petitioner was never involved in rendering of any service and that it was only the third respondent College who was rendering such service. He would further submit that the liability, if any, is only on the third respondent and not on the petitioner.

4. This Court does not propose to enter into the enquiry on the averments made by either side, for it requires examination of disputed question of facts, which is not normally undertaken in exercise of jurisdiction under Article 226 of Constitution of India.

5. At this juncture, the learned counsel for the petitioner would submit the petitioner may be granted one opportunity to go before the respondent authority to demonstrate that the liability has been wrongly fastened on him. In response to the same, the learned counsel for the respondents would submit that such opportunity may be granted to the petitioner upon payment of 25% of the disputed taxes, which was agreed to by the learned counsel for the petitioner.

6. Considering the submissions made by both sides and also the peculiar facts of the case, this Court grants one final opportunity to the petitioner to go

before the respondent authority and putforth his case, subject to the condition that the petitioner deposits a sum of 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. On complying the same, the respondent authorities would permit the petitioner to submit his representation along with other documentary evidence and on receipt of the same, the respondent authorities shall proceed to pass orders in accordance with law. If for any reasons, the above conditions are not complied with, the impugned order will stand revived. It is submitted by the learned counsel for the petitioner that the Bank account of the petitioner has been attached and it is made clear that upon payment of 25% of the disputed taxes, the attachment would be lifted forthwith.

7. This Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

**03.09.2024**

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

**To:**

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Trichy.

**MOHAMMED SHAFFIQ, J.**

Nsr

W.P.(MD)No.20937 of 2024

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