BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.23668 of 2022
&
W.M.P.(MD).No.17751 of 2022

Subramanian Chandran
Contractor ... Petitioner

Vs.

1.The Assistant Commissioner of CGST
and Central Excise, Dindigul II
Division, Race Course Road, Dindigul 624 005

2 The Commissioner of Central
GST and Central Excise (Appeals), Coimbatore
at Madurai, Central Revenue Buildings,
Bibikulam, Madurai 625 002

3 The Superintendent of CGST and
Central Excise, Theni Range, No.5a-1,
First Floor, Vasavi Colony,
Palanichettipatti, Theni 625 531

4 The Commissioner
Chinnamanur Municipality, Chinnamanur,
Theni District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in respect of impugned Order-in-original No.MDU-ST-AC-29-2022 dated 08.09.2022 in C.No.V/ 154/45/ 2019-ST passed by the First Respondent and Quash the same and be pleased to direct the learned First Respondent to re-hear the entire issue.

For Petitioner	: Mr.S.Renganathan
For Respondents 1 to 3	: Mr.N.Dilipkumar, Standing Counsel

ORDER

Petitioner has challenged the impugned order in Original No.MDU-ST-AC-29-2022 dated 08.09.2022. By the impugned order, the 1st respondent has confirmed the demand that was proposed on the petitioner in SCN No.3/2021-ST dated 17.07.2020.Operative portion of the impugned order reads as under:

> *" I confirm the demand of service tax of Rs. 16,73,787/- (Rupees Sixteen Lakhs Seventy Three Thousand Seven Hundred & seven Only) (ST Rs. 15,82,365/- Swatchh Bharat Cess Rs.56,513/- & Krishi Kalyan Cess Rs.34,909/-) for the period from 215-16 to 2017-18 (upto June 17) as determined abvoe on the Noticee being the amount of service tax not paid for the services provided by him, classifiable under Section 66 E9h) of the Finance*

Act, 1994 as declared services vz., Works Contract Service under Section 73(2) of the Act and order to recover the same from him;

(ii) I demand interest at appropriate rate from the Noticee under Section 75 of the Finance Act 1994 of the amount demanded at (i) above

(iii) I impose penalty of Rs.16,73,787/- (Rupees Sixtee Lakhs Seventy three thousand seven hundred and seven only) on the Noticee under Section 78 of the Finance Act, 1994 for willful suppression and contravention of provisions of the Act/Service Tax Rules, 1994 with the intent to evade payment of service tax.

(iv) I impose penalty of Rs.10,000/- (Rupees Ten thousand only) under Section 77(1)(c) of the Finance Act, 1994 in as much as he failed to furnish the required information and documents as called for;

(v) I impose penalty of Rs.10,000/- (Rupees Ten thousand only) under Section 77(2) of the Finance Act, 1994 in as much as he by not filing ST3 returns within due dates;

(vi) I do not impose any penalty under Section 76 of the Act, 1994 as penalty under Section 78 of the Act has already been imposed for suppression of facts of taxable service

(viii) I impose penalty o Rs.10,000/- towards late fee under Rule 7C of the Service tax Rules in

as much as towards delaying in filing of ST-3 returns;

(viii) However, in respect of penalty imposed vide(iii) above, I give option to the Noticee under the second proviso to Section 78(1) of the Act that the penalty can be reduced to 25% Service Tax demanded/confirmed if he pay the service Tax demanded/confirmed along with interest as well as the reduced penalty of 25% Service Tax demanded/confirmed within 30 days of the receipt of this order."

2. The dispute pertains to levy of service tax on works contract carried out by the petitioner to Chinnamannur Municipality. It is the specific case of the petitioner that impugned order has been passed in gross violation of principles of natural justice as no personal hearing was granted. Learned counsel for the petitioner would submit that petitioner was not liable to pay. He would however submit there is no mistakes in the arithmetics involved in the impugned order. He would at the same time submit that petitioner is entitled for the exemption in terms of Mega exemption notification No.25-2012-ST dated 20.06.2012 vide Sl.No.12

3. On the other hand, learned counsel for the respondent would

submit that not only the petitioner was given adequate opportunity of being heard but also given time for giving a reply. It is submitted that petitioner neither filed a reply nor appeared for a personal hearing. That apart it is submitted that issue is now squarely covered by the Division of this Court in M/s. Raju Construction Vs. The Government of India vide order dated 30.11.2022 of this Court. It is further submitted that the SLP filed against the order of the Division Bench has also been dismissed and therefore on this count also there is no merits in the present Writ Petition.

4. It is further submitted that even if the impugned order is set aside and remitted back, the respondent will be bound to follow the decision of the Division Bench of this Court in the above mentioned case and therefore no useful purpose will be served in quashing the impugned order and remitting the case back. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent,

5. In my view there is no point in setting aside the impugned order and remitting the case back to the respondent to pass a fresh order in the light of the decision of the Division Bench of the Court in the above case. It is still open for the petitioner to work out the remedy against the

Chinnamannur Municipality by applying the principle under the Sec. 64(A) of Sale of Goods Act, 1930.

With the above observation, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
kpr

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C.SARAVANAN, J.

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