BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.24245 of 2023

V.Kanagaraj ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Public Works Department,
Fort St.George, Secretariate,
Chennai – 600 009.

2.The Chief Engineer,
Public Works Department,
Building (Construction and Maintenance) Division,
Chennai.

3.The Chief Engineer,
Public Works Department,
Building (Construction and Maintenance) Division,
Madurai.

4.The Superintending Engineer,
Public Works Department,
Building (Construction and Maintenance) Division,
Madurai Circle, Madurai.

5.The Executive Engineer,
Public Works Department,
Building (Construction and Maintenance) Division,
Dindigul.

6.The Assistant Commissioner of
Central GST & Central Excise,
Nethaji Nagar, R.M.Colony Road,
Dindigul. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 5 to disburse the Service Tax, Interest and Penalty amount to the petitioner for the services rendered by the petitioner for a period from 2015 to 2017 based on his representation dated 07.08.2019 within the stipulated time as fixed by this Court.

For Petitioner : Mr.C.Mayilvahana Rajendran

For R1 to R5 : Mrs.S.Jeya Priya
Government Advocate

For R6 : Mr.N.Dilipkumar
Standing Counsel

ORDER

The petitioner has filed this Writ Petition for issuance of a Writ of Mandamus directing the first to fifth respondents to disburse the Service Tax, Interest and Penalty amount to the petitioner for the services rendered by him for a period from 2015 to 2017 based on his representation dated 07.08.2019 within the stipulated time as fixed by this Court.

2. The petitioner has placed reliance on the decision rendered by this Court on 17.07.2023 in the case of **V.Gopalakrishnan** Vs. **The Government of Tamil Nadu, rep. by its Principal Secretary, Public Works Department and others**, in W.P.(MD) Nos.16832 to 16840 of 2023, wherein, a direction was given to the Principal Secretary of Public Works Department to consider the case of the petitioners therein.

3. On the other hand, the learned counsel for the respondents has produced a copy of the order dated 05.08.2022 passed by the Principal Seat of this Court in the case of **M/s.Sree Saravana Engineering Bhavani (P) Ltd.** Vs. **The Commissioner, Greater Chennai Corporation and others**, in W.P.Nos.19906 & 19926 of 2022, wherein, the issue was considered at length in the context of TNVAT Act, 2006 and GST Acts, 2017 and in the light of Section 64A of the Sale of Goods Act, 1930. Relevant paragraphs of the said order dated 05.08.2022 read as under:-

> "*10.The fact of the matter is that the agreements were signed at the time, when Tamil Nadu Value Added Tax Act, 2006 was in force. The parties have factored 2% Vat under the provisions of*

the Tamil Nadu Value Added Tax, 2006. The nature of work carried out by the petitioner appears to be a work contract within the meaning of the Tamil Nadu Value Added Tax, 2006 as it stood then. Now under the provisions of the respective GST enactments of 2017, it is supply. Section 64A of the Sale of Goods Act, 1930 specifically deals with the situation in hand. It reads as under:-

> *"**64A. In contracts of sale, amount of increased or deceased to tax to be added or deducted:-***
>
> *(1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulations as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such good tax- paid where tax was chargeable at that time.-*
>
> *(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition, and*
>
> *(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer made deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.*

(2) The provisions of sub-section (1) apply to the following taxes, namely:-
(a) any duty of customs or excise on goods.
(b) any tax on the sale or purchase of goods."

11.Under these circumstances, I am inclined to dispose this writ petition by directing the respondents to consider and pass orders on the petitioner's representation dated 16.01.2018, 07.01.2019, 06.01.2020, 25.01.2022 and in the light of the provisions of the respective GST enactments of 2017 and after considering the requirement of G.O.Ms.No. 296, Finance (Salaries) Department dated 09.10.2017 and in the light of the Section 64A of the Sale of Goods Act, 1930.

12.This exercise shall be carried out by the respondents after giving due notice to the petitioner to substantiate this case within a period of eight weeks from the date of receipt of a copy of this Order. It is made clear no views are expressed on merits of the claim of the petitioner and the petitioner is entitled to give additional representation to the respondents.

13.Accordingly, these writ petitions stand dismissed with the above observations. No costs."

4. Therefore, I do not wish to take any alternate view in the facts of the case. Accordingly, this Writ Petition is disposed of by permitting the petitioner to approach the first to fourth respondents to reimburse the tax

on account of increase in the rate of tax after implementation of GST, applying principle in Section 64A of the Sale of Goods Act, 1930. No costs.

05.06.2024

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

JEN

Copy To:

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C.SARAVANAN, J.

JEN

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