BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.25974 of 2024
and
W.M.P(MD)No.22033 of 2024

The Commissioner of Police,
Madurai City,
Madurai. ... Petitioner

Vs

1.Union of India,
Represented by its Secretary,
Ministry of Finance,
(Department of Revenue),
Room No.46, North Block,
New Delhi – 110 001.

2.Union of India,
Represented by its Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 110 001.

3.Commissioner of Central Excise(Appeals),
Lal Bahadur Shashtri Marg,
C.R.Buildings,
Madurai – 2.

4.Deputy Commissioner of Central Excise,
Madurai -I Division,
Central Revenue Buildings,
V.P.Rathinasamy Road, Bibikulam,
Madurai – 2.

5.Superintendent of GST & Central Excise,
Madurai North Range,
Madurai-II Division,
Central Revenue Buildings,
3rd Floor, No.5, V.P.Rathanasamy Nadar Road,
Bibikulam, Madurai – 625 002. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of declaration, to call for the records of the impugned orders-in original No.MAD-CDX-000-DYC-012-13, dated 26.04.2013 and MAD-CEX-000-SUP-005-15, dated 31.03.2015 modified vide OIA No.MAD-ST-000-APP-35-2016, dated 23.03.2016 passed by the 3rd respondent and quash the same as well as any proceedings in furtherance of the same and consequently to declare that the activities of the petitioner are outside the purview of the union levy of service tax as that of the security agencies service and also to direct the 1st respondent to issue suitable instruction to his subordinate officers not to propose demand /or levy service tax on the petitioner for the statutory service rendered under the provision of the Tamil Nadu District Police Act, 1859 and the Chennai City Police Act, 1888 and under the relevant Government Orders of the State of Tamil Nadu as being outside the scope of the Chapter V and VA Finance Act, 1994.

For Petitioner	:	Mr.J.K.Jeyaseelan Government Pleader
For Respondents	:	Mr.N.Dilipkumar Standing Counsel

ORDER

The instant writ petition has been filed seeking a writ of declaration to call for records of the order dated 31.03.2015 modifying by an order dated 23.03.2016 passed by the third respondent herein.

2.A perusal of the affidavit reveals that the petitioner has been charged with the service tax for carrying out the sovereign function of providing security to the various banks and private financial institutions for transporting of cash from chest to ATM centres for being uploading in ATM's on payment of charges.

3.A similar issue was considered by this Court and orders were passed on 25.06.2024 in W.P(MD)No.18917 of 2022. Paragraph Nos.7 to 9 are extracted as follows:

> *"7. Prima facie, the issue is covered in favour of the petitioner in terms of the above-mentioned decisions of the Tribunals. However, it would not be prudent on my part to allow this Writ Petition straightaway as the petitioner has an alternate remedy. The issue on finer aspects of law has to be decided in a statutory appeal before the High Court or the Hon'ble Supreme Court, as the case may be.*

8.Therefore, I am inclined to dispose of this Writ Petition by giving liberty to the petitioner to file statutory appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, within a period of 60 days from today, without awaiting for the certified copy of this order.

9. If such appeal is filed with the web copy of this order, the CESTAT, Chennai shall entertain the appeal and dispose of the same on merits and in accordance with law. Needless to state, before passing the order, the Tribunal may examine the above decisions of the Tribunal cited by the learned Special Government Pleader for the petitioner and pass orders on merits, on its turn, as expeditiously as possible."

4.In view of the order passed by this Court, this Court is inclined to dispose of the writ petition with liberty to the writ petitioner to file a statutory appeal within a period of 60 days from today without awaiting for the certified copy of this order and in case, if the appeal is filed, the CESTAT, Chennai shall entertain the appeal and dispose of the same on merits and in accordance with law after giving due opportunity to the Government.

5.With the above said observations, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

29.10.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

To

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3.The Commissioner of Central Excise(Appeals),
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R.VIJAYAKUMAR, J.

RJR

5.The Superintendent of GST & Central Excise,
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