BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.26425 of 2022
and
W.M.P.(MD) No.20615 of 2022

M/S.Shema and Co.
Public Works Department Contractor,
represented by its Partner S.Sankar,
No.14, Makkan Thoppu Street,
Mela Masi Street,
Madurai 625 001. ... Petitioner

/vs./

1.The Union of India,
represented by its Secretary,
Ministry of Finance,
New Delhi.

2.The Deputy Commissioner of GST and Central Excise,
Madurai -I Division,
Central Revenue Building,
No.5, V.P.Rathinasamy nadar Road,
Bibikulam, Madurai 625 002.

3.The Government of Tamil Nadu,
rep.by its Finance Secretary,
Fort St.George, Chennai -9.

4.The Superintending Engineer,
Tamil Nadu Police Housing Corporation Limited,
South Circle, No.2, Inspector Quarters,
Tamil Nadu Special Police VI Battalion,
New Natham Road,
Madurai 625 014.

5.The Executive Engineer,
Tamil Nadu Police Housing Corporation Limited,
South Circle, No.2, Inspector Quarters,
Tamil Nadu Special Police VI Battalion,
New Natham Road,
Madurai 625 014. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the 2nd respondent in order in Original No.68/2022 dated 31.10.2022 and to quash the same is illegal, arbitrary, without jurisdiction and consequently direct the 1st respondent grant exemption from paying service tax in respect of the works contract service including service rendered to the 4th and 5th respondents other than commercial nature to the Government, local bodies, statutory authorities etc with effect from 01.04.2015 OR

Writ of Mandamus directing the respondents No 3 to 5 to pay the petitioner or directly to the 2nd respondent, the service tax, penalty and the interest, thereon as demanded by the 2nd respondent vide Order in Original No 68/2022 dated 31.10.2022 in respect of works contract service including civil works contract service other than commercial nature rendered by the petitioner to the

Government of Tamilnadu (i,e) 3rd respondent for the period from 01.10.2016 to 30.06.2017 within a time frame as fixed by this Court.

For Petitioner	: Mr.N.Sudalaimuthu
For R1	: Mr.D.Saravanan
For R2	: Mr.R.Nandakumar Standing Counsel for M/s.S.Ragaventhree Junior Standing Counsel
For R3	: Mr.S.P.Maharajan Special Government Pleader

ORDER

The petitioner has challenged the impugned Order in Original No.68 of 2022 dated 31.10.2022 passed by the second respondent.

2.By the impugned order, the second respondent has called upon the petitioner to pay service tax that was proposed in the show cause notice that preceded the impugned order on the works contract service provided by the petitioner between 01.10.2016 to 30.06.2017. Operative portion of the impugned order reads as under:-

" i) I confirm the demand of an amount of service tax of Rs. 18,59,829/- (ST-Rs.17,35,841/-, SBC-Rs.61,994/- KKC-Rs.61,994/-) (Rupees Ten lakhs eighteen thousand one hundred and fourty five only) as determined above on the noticee being the amount of service tax not paid for the Works Contract services provided by them, for the period from 1.10.2016 to 30.06.2017 under Section 73(2) of the Act and order to recover the same from them;

ii) I demand interest at appropriate rate from Noticee, on delayed payment of Service tax under Section 75 of the Finance Act, 1994 on the amount demanded as (i) above

iii) I impose penalty of Rs. 18,59,829/- on the Noticee, under Section 78 of the Finance Act, 1994 for their action regarding non-payment of Service tax with the intent of evade payment of Service Tax,

(iv) I impose penalty of Rs. 10,000/- (Rupees Ten thousand only) under Section 77 (1) (a) of the Finance Act, 1994 on the Noticee, in as much as they failed to get themself registered with the Department.

(v) I impose Penalty of Rs. 10,000/- (Rupees Ten thousand only) under Section 77 (I) (c) of the Finance Act, on the Noticee in as much as they failed to furnish the required information and documents as called for;

(vi) I impose penalty of Rs. 10,000/- (Rupees Ten thousand only) under Section 77 (2) of the Finance Act, 1994 on the Noticee for their failure to file the statutory ST-3 returns during the material period.

(vi) However, in respect of Penalty imposed (iii) above, I give option to the Noticee under the Second proviso to Section 78 (1) of the Finance Act, 1994 that the penalty can be reduced 25% Service Tax demanded/confirmed if they pay the Service Tax demanded/ confirmed along with interest as well the reduced penalty of 25% Service Tax demanded/confirmed within 30 days of the receipt of this Order."

3.The issue is now covered by the decision of the Division Bench of the Principal Seat in W.P.No.24996 of 2019 dated 30.11.2022. The relevant portion reads as under:-

> *"123.The prayer for a direction to refund of tax already paid by the petitioner also cannot be countenanced as these petitioners are liable to tax. Therefore, wherever the Orders-in-Original have been passed, the respective petitioners are given liberty to file statutory appeal before the Appellate Authority subject to the compliance of the other requirements of pre-deposit the amount as is contemplated under Section 35F of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994, within a period of thirty (30) days from the date of receipt of a copy of this order.*
>
> *124.Subject to the above, the appeals to be filed by the respective petitioners shall be entertained by the Appellate Authority before whom the appeals are to be filed by the respective petitioners within such time. If such appeals are filed within such time, the Appellate Authority shall pass appropriate orders in the proposed appeals to be filed by the respective petitioners on merits and in accordance with law without reference to the limitation."*

4.This has also been followed recently by this Court in W.P.(MD) No.6852 of 2024 (***Vishnuraj Jeyachandran Vs. The Deputy Commissioner of CGST and Central Excise, Madurai II Division, Bibikulam, Madurai 625 002 and another***) dated 21.03.2024.

5.Considering the same, the Writ Petition is dismissed with liberty to the petitioner to file a statutory appeal before the appellate Commissioner under

Section 85 of the Finance Act, 1994 within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.04.2024

Index : Yes / No
Internet : Yes / No
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To

The Finance Secretary,
Fort St.George, Chennai -9.

C.SARAVANAN, J.

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W.P.(MD) No.26425 of 2022

08.04.2024