IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 11TH DAY OF AUGUST 2020/20TH SRAVANA, 1942

WP(C).No.13689 OF 2020(I)

PETITIONER:

M/S.HOMESTEAD PROJECTS AND DEVELOPERS
(P) LTD.,7/109 A2, ZENITH ARCADE,
EAST BAZAR, TIRUR, MALAPPURAM-676 101,
REPRESENTED BY ITS AUTHORISED SIGNATORY,
ADBUL LATHEEF KAINIKKARA, MANAGING DIRECTOR.

BY ADVS.
SRI.JOSE JACOB
SHRI.JAZIL DEV FERDINANTO

RESPONDENTS:

1 COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,CENTRAL TAX AND CENTRAL EXCISE COMMISSIONERATE -CALICUT, C.R.BUILDING, MANACHIRA, CALICUT-673001.

2 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE,AUDIT CIRCLE-7, METTUPALAYAM STREET, PALAKKAD-678 001.

3 SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE,DEPARTMENT OF REVENUE, OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX AND CENTRAL EXCISE, TIRUR RANGE, TARIFF BAZAR, TIRUR-676101.

4 ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTAL EXCISE (AUDIT),AUDIT CIRCLE-7, METTUPALAYAM STREET, PALAKKAD-676 101.

5 SOUTH INDIAN BANK,THAZHEPALAM BRANCH, TIRUR, MALAPPURAM-676 101.

6 **STATE BANK OF INDIA,THAZHEPALAM BRANCH, TIRUR,MALAPPURAM-676 101.**

7 **DHANALAKSHMI BANK, THAZHEPALAM BRANCH, TIRUR, MALAPPURAM-676 101.**

R1-R4 BY ADV. SMT.SHEELA DEVI.I., SC
R5 BY ADV. SRI.GEORGE VARGHESE, SC
R6 BY ADV. SRI.VIJU ABRAHAM, SC
R7 BY ADV. SRI.C.K.KARUNAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T
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Dated this the 11th day of August, 2020

The petitioner, a Private Limited Company, seeks to set aside Exts.P11, P12 and P13 notices issued by the 3rd respondent. A further order is sought to direct the 3rd respondent not to initiate any proceedings against the petitioner under the Finance Act, 1994 for the period till June, 2017 pending adjudication of Ext.P8 show-cause notice.

2. The petitioner, who has registered with the Service Tax Department under the category 'Construction of Residential Complex Service', has been regularly discharging its service tax liability, filing applicable returns. The 2nd respondent conducted service tax audit of the petitioner for the period from 01.04.2015 to 30.06.2017, in the year 2019. There were audit objections. The petitioner filed reply to the objections. However, the petitioner was served with Ext.P8

show-cause notice dated 16.03.2020 invoking Section 73(1) of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017. The petitioner was required to produce all the evidences upon which they intend to rely in support of their defence.

3. The petitioner was preparing to respond to Ext.P8 show-cause notice. While so, the petitioner received Ext.P9 notice dated 11.03.2020 directing the petitioner to pay ₹8,62,397/- along with interest. The petitioner filed Ext.P10 reply stating that recovery proceedings under Section 87 of the Finance Act, 1994 cannot be initiated without adjudication. However, in spite of submission of Ext.P10 reply, respondents 1 to 4 served notices dated 01.07.2020 on the Bankers of the petitioner invoking Section 87(b) of the Finance Act, 1994 directing the Bankers of the petitioner to debit freeze the current accounts held by the petitioner in their banks. The bankers were instructed to close all other accounts related to the petitioner and to remit the amount available in the accounts, to the government, within 15 days.

4. When this writ petition came up for admission, this Court passed an interim order staying the operation of Exts.P11, P12 and P13 notices addressed to the Banks.

5. Respondents 1 to 4 contested the writ petition filing counter affidavit. The respondents stated that the internal audit party, Palakkad detected that the petitioner had short paid service tax to the tune of ₹8,62,397/- during the period from October, 2016 to February, 2017. The Range Officer was directed to initiate action for recovery of the short payment with interest. The petitioner was required to make good the pay-deficit service tax. It is on the failure of the petitioner to make payment, that Exts.P11 to P13 notices were issued to the bankers of the petitioner. The Standing Counsel for the respondents submitted that there is no arbitrariness in their action. The petitioner is liable to pay the demanded amount.

6. The learned Standing Counsel further pointed out that there was omission on the part of the petitioner and the petitioner could not carry forward the opening balance of

CENVAT credit of ₹1,94,892/- in the ST-3 returns for the period from October, 2015 to March, 2016. They also did not avail the CENVAT credit of ₹22,49,049/- during the period from April, 2016 to September, 2016 being the service tax paid by them under the reverse charge mechanism. Once these omissions are rectified, there is no short payment and instead, they are left with unutilised CENVAT credit of ₹25,50,402/-. The petitioner could have revised the returns as provided under Rule 7(b) of Service Tax Rules, 1994, which they have not done. The petitioner has to blame itself for the mess it is in.

7. Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents.

8. Respondents 1 to 4, on an audit conducted by the internal audit team, has detected non-payment of service tax. According to the respondents, the dues from the respondents were due to the failure of the petitioner in carrying forward opening balance of CENVAT credit and filing proper returns. The petitioner cannot therefore raise

any grievance.

9. Be that as it may, the petitioner has been issued with Ext.P8 show-cause notice invoking Section 73(1) of the Finance Act, 1994 read with Section 174(2) of CGST Act, 2017. The petitioner has the opportunity to explain its stand and position before the 4th respondent. Before adjudicating the issues raised in Ext.P8 show-cause notice, if the respondents proceed under Section 87(b) of the Finance Act and Section 79(1)(c)(i) of the Act read with Section 142(8)(a) of the CGST Act, 2017, the petitioner will indeed be put to hardship. Such proceedings are ordinarily to be initiated only after adjudication process is over.

In the circumstances, the writ petition is disposed of directing the 4th respondent to give opportunity to the petitioner to adduce such evidence before the 4th respondent in order to explain the deficiencies pointed out in Ext.P8. After considering the reply given by the petitioner to Ext.P8 show-cause notice and after considering the materials adduced by the petitioner, the 4th respondent shall pass appropriate orders on Ext.P8 in accordance with law, within a period of one month. The interim order passed by this Court on 08.07.2020 will enure to the benefit of the petitioner for the period of one month.

Sd/-
N. NAGARESH, JUDGE

aks/12/08/2020

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF AUDIT OBJECTIONS DATED 14.1.2019.
EXHIBIT P2	TRUE COPY OF LETTER CONTAINING REVISED AUDIT OBJECTIONS DATED 15.2.2019.
EXHIBIT P3	TRUE COPY OF REVISED AUDIT OBJECTIONS DATED 19.2.2019.
EXHIBIT P4	TRUE COPY OF REPLY TO AUDIT OBJECTIONS DATED 25.4.2019.
EXHIBIT P5	TRUE COPY OF LETTER NO.204/2019 DATED 8.8.2019.
EXHIBIT P6	TRUE COPY OF LETTER NO.217/2019 DATED 19.8.2019.
EXHIBIT P7	TRUE COPY OF REPLY TO LETTER NO.204/2019 AND 217/2019 DATED 22.8.2019.
EXHIBIT P8	TRUE COPY OF SHOW CAUSE NOTICE NO.5/2020-ST DATED 16.3.2020.
EXHIBIT P9	TRUE COPY OF NOTICE NO.147/2020 DATED 11.3.2020.
EXHIBIT P10	TRUE COPY OF THE REPLY TO NOTICE NO.147/2020 DATED 20.3.2020.
EXHIBIT P11	NOTICE UNDER SECTION 87(B) OF THE FINANCE ACT, 1994 DATED 1.7.2020.
EXHIBIT P12	NOTICE UNDER SECTION 87(B) OF THE FINANCE ACT, 1994 DATED 1.7.2020.
EXHIBIT P13	NOTICE UNDER SECTION 87(B) OF THE FINANCE ACT, 1994 DATED 1.7.2020.
EXHIBIT P14	TRUE COPY OF WORKINGS.