

GAHC010089392022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3106/2022

ANUP TRADE AND TRANSPORT PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 HAVING ITS
REGISTERED OFFICE AT HOUSE NO. 51 SUNDARPUR MAIN LANE
JAPORIGOG GUWAHATI-781005 KAMRUP (M) REP. BY ITS DIRECTOR SRI
ANUP KUMAR JASRASARIA AGED ABOUT 50 YEARS

VERSUS

UNION OF INDIA AND ANR.
REP. BY ITS SECRETARY TO THE GOVT. OF INDIA DEPTT. OF REVENUE
MINISTRY OF FINANCE NORTH BLOCK, NEW DELHI-110001

2:PRINCIPAL COMMISSIONER
GST AND CENTRAL EXCISE COMMISSIONERATE
GST BHAWAN KEDAR ROAD
MACHKHOWA GUWAHATI
PIN-78100

Advocate for the Petitioner : MR. B CHAKRABORTY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 14.02.2023

Heard Mr. B. Chakraborty, learned counsel for the petitioner. Also heard Mr.
S. C. Keyal, learned standing counsel for the GST.

2. The petitioner is a private limited company and undertakes various contract works with the Government and public sectors undertakings. The petitioner has transport business and has executed several transportation works under the Food Corporation of India. The petitioner has Service Tax registration number being Registration No. AACCA4363PST001. A demand-cum-show cause notice vide No. C.No.V (15)92/ADJ/CGST-HQRS/ GHY /ST/2021/1447 dated 26.04.2021 was served upon petitioner demanding recovery of service tax amounting to Rs.6,21,17,337/- for the period of 2015-16 along with applicable interests and further as to why penalty as applicable should not be imposed, was served upon the petitioner. The petitioner in response to the show cause submitted its reply dated 25.06.2021 refuting the allegations made in the demand-cum-show notice. According to the petitioner, the services rendered by the petitioner as goods transportation and handling for the Food Corporation of India are exempted from payment of service tax under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 01.07.2012. According to the petitioner, there was no suppression or understatement or short payment of service tax, as no service tax is payable. However, the respondent authority vide impugned order dated 01.02.2022 confirmed the demand of service tax and Cess amounting to Rs.6,21,17,337/- for the period of 01.04.2015 to 31.03.2016 along with interest and penalty of the same amount and also imposing a penalty of Rs.10,000/- for violation of Section 70 of Finance Act, 1994. The petitioner received a copy of the impugned order dated 11.03.2021.

3. The learned counsel for the petitioner submits that the impugned order passed by the authority is completely against the provisions law inasmuch as in terms of the Mega Exemption Notification dated 20.06.2012, the services of transportation of foodgrain to FCI are exempted. Though, this fact is reflected in

the impugned order, the respondent authority proceeded to impose the demands on the ground that no documentary evidence in support of the services rendered was furnished by the petitioner. According to the petitioner, the reply was submitted through online mode as the same was during COVID-19 pandemic situation. It was stated in the reply submitted that all necessary documentary evidences are available and which would be produced at the time of hearing. However, without affording any opportunity for filing the necessary documents, the impugned order was passed. The learned counsel for the petitioner submits that the impugned order confirming the demand raised is totally in violation of the provisions of the Finance Act, 1994 read with the Mega Exemption Notification dated 20.06.2012 besides the same being opposed to the settled principles of violation of natural justice.

4. The learned counsel for the petitioner submits that adequate opportunity for furnishing the documentary evidences was not afforded to the petitioner and, therefore, the impugned order confirming the demand passed by the respondent authority is bad in law and the same is required to be interfered with and set aside and quashed.

5. The learned counsel for the petitioner submits that the co-ordinate benches of this Court vide order dated 23.03.2022 passed in WP(C) No. 1870/2022 and order dated 04.04.2022 passed in WP(C) No. 2382/2022, in similar matters had interfered with the demand notice and remanded the matters back to the authorities for a fresh determination after affording appropriate opportunity to produce any relevant material in support.

6. Mr. S. C. Keyal, learned standing counsel for the GST does not dispute the contentions of the petitioner in respect of the order dated 23.03.2022 passed in WP(C) No. 1870/2022 and order dated 04.04.2022 passed in WP(C) No.

2382/2022 respectively by Co-ordinate Benches of this Court. He has fairly submitted that similar order may also be passed in the writ petition remanding the matter back to the authority for re-consideration of the claims of the petitioner.

7. In view of the submissions made by the petitioner and upon due perusal of the order dated 23.03.2022 passed in WP(C) No. 1870/2022 and order dated 04.04.2022 passed in WP(C) No. 2382/2022 respectively, this Court is of the view that this writ petition can also be disposed of in similar terms by interfering with the impugned order and remanding the matter back to the respondents authorities. This Court proposes to dispose of this matter in terms of the orders passed by the Co-ordinate Bench in view of the fact that a perusal of the Mega Exemption Notification dated 20.06.2012 reveals that in respect of the services stated to be rendered by the petitioner as transporter of goods, the service tax is payable by the recipient of such services. The petitioner as a supplier of such service is exempted from payment of service tax. The petitioner further claims that all required and necessary documentary evidences are available with the petitioner which would have been submitted before the authorities at the time of consideration of the matter but for the prevailing COVID-19 Pandemic situation at the relevant point in time which prevented the petitioner from furnishing the relevant documents before the authority at the time of consideration of this matter.

8. Accordingly, in view of the discussions above, this Court is of the view that the matter can be remanded back to the authorities who will re-consider the matter afresh and pass appropriate orders. The petitioner will appear before the respondent authority on 13.03.2023 on which date the Principal Commissioner, CGST & CX, Guwahati will proceed for hearing of the matter afresh. The

petitioner will also be entitled to furnish all relevant documents before the authority prior to the matter being heard. Upon hearing the matter afresh, an appropriate reasoned order will be passed. In the event, the concerned authority comes to a conclusion that the petitioner is exempted from payment of service tax under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 then appropriate orders will be passed by recalling the impugned order dated 01.02.2022 and demand notice dated 26.04.2021. Till such hearing is complete and orders are passed, no coercive action shall be taken pursuant to the impugned order dated 01.02.2022 by the respondent authority.

9. With this observation, this writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant