

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.686/2022

Shri Niranjana Debnath, S/O. Sri Nilmani Debnath, Resident of Village-Santipur, P.S.: -Pechartal, District:-Unakoti Tripura.

..... Petitioner(s).

V E R S U S

1. The Union of India, Represented by the Secretary, Ministry of Finance, Department of Revenue.

2. The Assistant Commissioner, Central Goods and Services Tax, Tripura-II Division, Agartala, 3rd floor, Jackson Gate Building, Lenin Sarani, Agartala-799001.

.....Respondent(s).

For Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy. S.G.I.,
Mr. Paramartha Datta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment: **10th September, 2024.**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

Heard Mr. G.K. Nama, learned counsel appearing for the petitioner, Mr. Paramartha Datta, learned counsel appearing for the respondent-Revenue and Mr. Bidyut Majumder, learned Dy. S.G.I. appearing for the respondent-Union of India.

2. The order-in-original dated 01.02.2022 (Annexure-6) passed by the Assistant Commissioner, Central Goods and Services Tax (CGST), Tripura-II Division, Agartala is under challenge in the present writ petition whereby the Adjudicating Officer has confirmed the demand raised through Show Cause Notice dated 22.04.2021 in respect of the financial year 2015-16 and imposed the liability of Service Tax including cess amounting to Rs.13,50,020/- under

Section 73(2) of the Finance Act, 1994 as amended; also ordered to recover interest on Rs.13,50,020/- for the financial year 2015-16 from the noticee at the prescribed rate under Section 75 of the Act; imposed a penalty of Rs.10,000/- under Section 77 of the Act of 1994 as amended for not obtaining Service Tax registration under Section 69 of the Act and further imposed penalty of Rs.13,50,020/- for the said financial year under Section 78(1) of the Finance Act, 1994.

3. Petitioner did not invoke the appellate remedy despite clear indication in the order-in-original in its opening proforma and instead invoked the writ jurisdiction of this Court by filing the present writ petition on 06.07.2022, i.e. beyond the period of 60 days limitation prescribed for preferring the appeal. On that ground alone, the writ petition is fit to be dismissed following the ratio laid down by the Apex Court in the case of *Assistant Commissioner (CT) LTU, Kakinada & others vrs. Glaxo Smith Kline Consumer Health Care Limited* reported in (2020) 19 SCC 681.

However, learned counsel for the petitioner has pressed the challenge on grounds of merit. Counter affidavit, additional affidavit and rejoinder have also been filed. Therefore, we proceed to deal with the contentions of the petitioner on merits as well.

During course of hearing, learned counsel for the petitioner has submitted that being a sub-contractor vide work order dated 15.09.2015 to the principal contractor "Pusphas Construction Private Ltd.", petitioner is not liable to pay any Service Tax when the principal employer is exempted from liability of Service Tax in view of the Mega Notification No.25/2012 dated 20.06.2012. He has referred to Annexure-1 being the tender document under which

principal contractor was awarded 13(thirteen) items of work by the Northeast Frontier Railway. He has referred to the work order dated 15.09.2015 (Annexure-2) as to the specified items of only 6(six) works allotted to him under the works contract by the principal contractor. He submits that under the Mega Notification, Clause-II item-9 thereof the liability for payment of Service Tax in such an event is 50% each to the principal contractor and the sub-contractor. However, petitioner has been imposed the 100% liability for non-payment of Service Tax which is bad in law.

4. Learned counsel for the petitioner has then submitted that the Show Cause Notice dated 22.04.2021 in relation to the financial year 2015-16 is beyond the period of limitation of two years as there is no willful intent to evade taxes in terms of proviso to Section 73(1) of the Finance Act, 1994. He has referred to the Master Circular dated 10.03.2017 (para-3.1 to 3.3) to submit that the department has failed to show any fraud or collusion or willful misstatement or suppression of fact or contravention of any of the provisions of the Central Excise Act, 1944 or the Rules made thereunder with intent to evade payment of duty for which a longer period of limitation of 5(five) years from the relevant date would be applicable. Therefore, the impugned order arising out of the Demand-cum-Show Cause Notice dated 22.04.2021 is without jurisdiction.

5. Learned counsel for the petitioner has further submitted that petitioner was not liable to undertake Service Tax Registration as he was exempted from the liability of paying Service Tax in respect of the work in question allotted by the principal contractor. The impugned order-in-original is, therefore, bad in law and fit to be set aside. Moreover, relevant documents

furnished by the petitioner have not been taken into account while passing the impugned order.

6. Learned counsel for the respondent-Revenue has drawn the attention of this Court to the allegations made in the Show Cause Notice (Annexure-5). He submits that the petitioner was engaged in providing Works Contract Services during the financial year 2015-16 which is taxable but he did not obtain Service Tax Registration which is mandatory. Despite issuance of notices dated 06.01.2020 and 12.10.2020 to submit documents such as consignment notes, 26 AS, Balance Sheet, Profit and Loss Account for the financial year 2015-16, he did not submit any documents. He further submits that personal hearing was granted to the noticee on 22.09.2021 which he replied by showing his inability to attend the same on account of Covid. However, the authorized representative of the noticee appeared for personal hearing on 25.01.2022 and submitted that he provided vehicles on hire to various parties. He also stated that he had no knowledge of Service Tax and, therefore, he did not take up registration of the same. Lastly, he submitted that 26 AS for the period 2015-16 showed an amount of Rs.1,52,29,291/- paid to the noticee by M/S. Pusphas Construction Private Limited.

7. Learned counsel for the respondent-Revenue submits that the learned Adjudicating Officer has also accorded due consideration to Section 66 D of the Act of 1994 as amended which contains the Negative List of Services. Clause (p) includes 'Services by way of Transportation of Goods, by Roads except the Services of a Goods Transport Agency'. However, noticee did not submit any supporting documents in respect of his claim as he did not possess any documents to prove the same. Therefore, the Adjudicating Officer had no

other option but to confirm the demand raised through the Show Cause Notice. Petitioner had neither taken Service Tax Registration nor submitted ST-3 returns declaring the taxable value for providing taxable service. Non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or to furnish any information on being asked for in writing by the officer, is evident of suppression of material facts from the department with an intention to evade payment of Service Tax.

8. It is further submitted that the Show Cause Notice clearly recorded that the case of evasion of tax came to the knowledge of the department only from records of Income Tax data and subsequently during investigation by the officials of CGST Commissionerate, Agartala. Had it not been detected by the officers of CBDT and the Investigating Officers of CGST, Agartala, the Government would have been deprived of its legitimate dues. Therefore, there was every reason to believe that there was conscious and deliberate withholding of information when the noticee knew their actual tax liability but suppressed the material facts from the department with an intention to evade payment of Service Tax and violated the provisions of Sections 67, 68 and 70 of the Act read with Rules 6 and 7 of the Rules for which the extended period of limitation as envisaged in the proviso to Section 73(1) of the Act as amended is liable to be invoked from the relevant date.

9. He further submits that in the additional affidavit pursuant to the query posed by this Court specific statements have been made that the relevant date for filing return was 25.04.2016 for the financial year 2015-16 and as such, the Show Cause Notice issued on 22.04.2021 invoking the extended period of limitation of 5(five) years was within jurisdiction and not barred by limitation.

It is submitted that petitioner cannot claim benefit of Mega exemption without filing Service Tax Returns as there is no implicit knowledge with the department that the benefit of such exemption notification could be available to an assessee on his own without filing any returns. Therefore, the impugned order does not suffer from any error on grounds of fact or on law. Moreover, petitioner has approached this Court after expiry of the period of limitation of 60 days for preferring an appeal. Therefore, the writ petition may not be entertained.

10. We have considered the submissions of learned counsel for the parties at length and taken note of the relevant materials placed on record. We have also gone through the Demand-cum-Show Cause Notice dated 22.04.2021 and the Order-in-Original dated 01.02.2022 (Annexure-5 & 6 respectively).

11. The department has invoked the extended period of limitation under proviso to Section 73(1) of the Act of 1994 as the noticee/petitioner neither had obtained Service Tax Registration nor submitted ST-3 returns though he was providing Works Contract Services as a sub-contractor to the principal contractor for the financial year 2015-16 whereas for providing such services, Service Tax Registration was mandatory. In the absence of Service Tax Registration or filing of any returns, the department could discover evasion of tax only on the basis of the data obtained from the Income Tax Department and subsequently during investigation by the officials of CGST Commissionerate, Agartala. Therefore, the Show Cause Notice clearly records that there is every reason to believe that there was conscious and deliberate withholding of information by the noticee which amounts to suppression of material facts from the department with an intention to evade payment of

Service Tax and thereby violation of the provisions of Sections 67, 68 and 70 of the Act read with the relevant Rules giving rise to the initiation of proceedings under proviso to Section 73(1) of the Act during the extended period of limitation of 5(five) years from the relevant date. It is clear that the relevant date for filing returns for the financial year 2015-16 was 25.04.2016 and, therefore, 5(five) years reckoned from that date would have expired on 25.04.2021.

12. The Show Cause Notice was issued on 22.04.2021 and as such, was well within the extended period of limitation. Therefore, the contention of the petitioner that there was no intention to evade tax and that the extended period of limitation was not available for initiating proceedings against him is not acceptable in law and on facts. This Court is of the further opinion that in the absence of undertaking Service Tax Registration or filing of ST-3 returns for providing services of the nature of transportation of goods by roads exemption from payment of Service Tax as a service provider in terms of the Mega Notification No.25/2012, dated 20.06.2012 could not have been granted.

13. Exemption notification should be interpreted strictly. The burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. In this regard reliance is placed on the Constitution Bench decision of the Supreme Court in ***Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company and Ors.***, reported in (2018) 9 SCC 1. Paragraphs 53 and 66 of the report are extracted hereunder:

“53. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

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66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in *Sun Export case* [*Sun Export Corpn. v. Collector of Customs*, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in *Sun Export case* [*Sun Export Corpn. v. Collector of Customs*, (1997) 6 SCC 564] stand overruled.”

14. In the absence of Service Tax Registration or ST-3 returns, the department could not have any occasion to believe that the noticee was exempted from payment of Service Tax by virtue of the Mega exemption notification No.25/2012. From perusal of the impugned order, it also appears that the petitioner failed to file reply to the Demand-cum-Show Cause Notice and no such documents as were called for by letters dated 06.01.2020 and 12.10.2020, such as consignment notes, 26 AS, Balance Sheet, Profit and Loss Account for the financial year 2015-16 were submitted to substantiate the plea of the petitioner that he was exempted from Service Tax liability. The Adjudicating Officer despite non-furnishing of any reply did give personal hearing to the noticee which was attended on 25.01.2022. As such, principles of nature justice also stood satisfied.

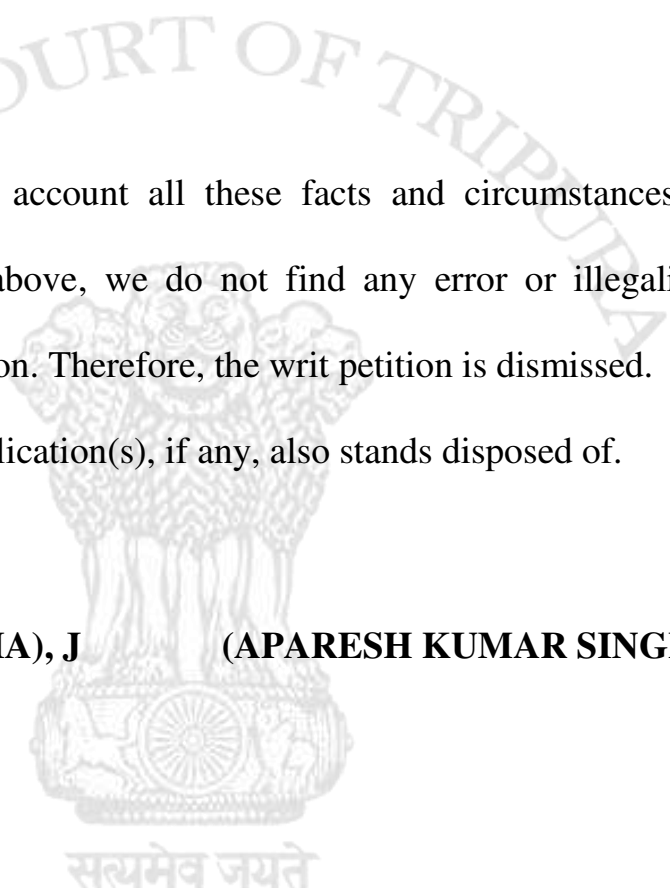
15. Learned counsel for the petitioner during course of submission has taken a plea that these documents were submitted before the Adjudicating Officer. However, no such specific averments have been made in the pleadings of the writ petition to that effect. As such, the contention that the Adjudicating Officer failed to take into account documents submitted by the petitioner is not worth acceptance.

16. Taking into account all these facts and circumstances and the reasons recorded hereinabove, we do not find any error or illegality in the impugned order in question. Therefore, the writ petition is dismissed.

Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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