In the High Court of Judicature at Madras

Dated : 30.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.31155 to 31165 of 2017 &
WMP.Nos.34200 to 34210 of 2017

Muzaffer Ahmed, Chief Executive
Officer, Millath Haj Service, Chennai.
...Petitioner WP.No.31155 of 2017

AI-Misbah Haj & Umra Services
Rep by its Managing Partner 51
Sudenhams Road Periamet Chennai 3.
...Petitioner WP.No.31156 of 2017

A.Minnoor Saleem
Proprietor Saleem Haj and Umra Services
1st Floor 3/2 Kumarappa Street Periyamet
Chennai 3. ...Petitioner WP.No.31157 of 2017

Binarangg Travels Private
Limited Rep by its Managing Director No.64
Second Floor Hawwa Complex Mannadi Street
Chennai
...Petitioner WP.No.31158 of 2017

M.A.Ahamed Meeran
Proprietor AI Madeena Haj Services No.
41/64 Hawwa Complex II Floor Mannady
Street Chennai 1 ...Petitioner WP.No.31159 of 2017

AI Hussam Travels and Tours
India Private Limited Rep by its Managing
Director No.3 Second Floor Balfour Road
Kilpauk Chennai.
...Petitioner WP.No.31160 of 2017

AI Haramine Haj Service (P)
Ltd Rep by its Managing Director Old No.73
New No.10 Thatha Muthiappan St Opp
Kothawal Chawadi Police Station George Town
Broadway Chennai ...Petitioner WP.No.31161 of 2017

Richway Tours & Travels
Proprietor 33 Sir Shanmugam Road R.S.
Puram Coimbatore. ...Petitioner WP.No.31162 of 2017

A.M.Imdaullah
Moulana Haj Service Proprietor No.65
Ponnappa Street Purasawakkam Chennai
...Petitioner WP.No.31163 of 2017

Y.Buhari
S/o.Yusuf Proprietor Barakath Haj Services
sMJ Parrys Plaza. 4-A2 1st Floor No.
12/28 2nd Lane Beach Parrys Chennai 1.
...Petitioner WP.No.31164 of 2017

AI Hudha Haj Service Private
Limited Rep by its Managing Director
Second Floor 2/117 Armenia Street Mannady
Chennai 1. ...Petitioner WP.No.31165 of 2017

Vs

1.The Government of India, rep.by
its Secretary, Ministry of Minority
Affairs, Haj Division, ISIL Building,
V.K.Krishnavelan Bhavan, No.9,
Bhagavandas Marg, New Delhi.
..1st Respondent in all W.Ps

2.The Deputy Commissioner (Preventive),
O/o the Principal Commissioner of
GST and Central Excise, Chennai
North Commissionerate, No.26/1,
Mahatma Gandhi Road, Chennai-34. ...2nd Respondent in all W.Ps except W.P.No.31162/2017.

3. The Superintendent
(Preventive) O/o.The Principal Commissioner
of GST and Central Excise 6/7 A.T.D.
Street Race Course Road Coimbatore

4. The Commissioner of Service
Tax Appeals I 6/7 A.T.D.Street Race
Course Road Coimbatore.
..Respondents 2 & 3 in W.P.No.31162/2017.

Common Prayer :

Writ Petitions under Article 226 of The Constitution of India praying for the issuance of a Writ of Prohibition prohibiting the second respondent from holding any enquiry/assessment/demand in furtherance of the proceedings of the second respondent in C.No.IV/6/04/2017-HPU dated 11.9.2017 and summons No.23/2017 dated 13.11.2017.

For Petitioners: Mr.M.Ajmal Khan, SC for
M/s.Ajmal Associates
For Union : Mr.K.Raju, CGSC
For Department : Mrs.Hema Muralikrishnan, SPC

COMMON ORDER

Mr.K.Raju, learned Central Government Standing Counsel accepts notice for the Union. Mrs.Hema Muralikrishnan, learned Senior Panel Counsel accepts notice for the Department. As the issue raised in these writ petitions is identical, all the writ petitions are taken up for joint disposal.

2. The petitioners seek for the issuance of a Writ of Prohibition to prohibit the second respondent from holding any enquiry or assessment or raising demand in furtherance of the proceedings of the second respondent dated 11.9.2017/12.9.2017 and the summons dated 13.11.2017. By proceedings dated 11.9.2017/12.9.2017, the second respondent sent notices to the respective petitioners calling upon them to produce their balance sheets and profit and loss account statements for the years 2012-13 to 2016-17 along with income tax returns, reconciliation of balance sheet for the said periods, details of taxable value received/invoices raised and service tax paid/to be paid/if any, for the periods from 01.4.2012 to 30.6.2017, details of input service credit, sample copies of invoices, service tax paid under reverse charge, brief write up about the petitioners' business activities, copies of respective service tax registration certificates, copies of ST3 returns for the said periods, list of their respective bankers along with addresses and account numbers, copies of debit notes as well as credit notes, list of clients/ customers along with full address and details of foreign exchange inward and outward remittances.

3. The details called for are common to all the petitioners. One more common feature in all these writ petitions is that all of them registered themselves under Chapter V of the Finance Act, 1994 read with the Service Tax Rules, 1994 for providing tour operator services and/or travel agent services. The reason for approaching this Court by way of these writ petitions is on the strength of the Exemption Notification issued by the Central Board of Excise and Customs (CBEC) dated 30.10.2009 in Circular No.117/11/2009-ST and the CBEC's Notification No.17/2014 dated 20.8.2014.

4. The learned Senior Counsel appearing for the petitioners submits that by Notification dated 30.10.2009, the CBEC clarified that service tax is not chargeable on the services provided in respect the tour undertaken for carrying out Haj and Umra pilgrimage in Saudi Arabia by Indian pilgrims considering

the same as 'export of service' provided they fulfill the other conditions of export as provided in the Export of Service Rules. By referring to the Notification dated 20.8.2014, it is further submitted that the Central Government directed that service tax payable under Section 66B of the Finance Act, 1994 on the services provided by the said specified organizations in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, Government of India, under the bilateral arrangement during 01.7.2012 to 19.8.2014, but for the said practice, shall not be required to be paid.

5. Therefore, it is also submitted that the second respondent has no jurisdiction to compel the petitioners to produce the documents called for, as the services rendered by them are fully exempt. Reliance is placed on the decision of the Hon'ble Division Bench of the Delhi High Court in the case of Indian Association of Tour Operators Vs. Union of India [W.P.(C) No. 5267 of 2013 dated 31.8.2017]. It is submitted that in the said decision, the Hon'ble Delhi High Court declared Rules 6A(1) read with 6A(2) of the Service Tax Rules in so far as they seek to describe export of tour operator services to include non taxable services provided by tour operators, ultra vires the Finance Act and in particular, Section 94(2)(f) of the Finance Act and are invalid.

6. According to the learned Senior Counsel, in the said decision, it was held that Section 94(2)(f) or (hhh) of the Finance Act does not empower the Central Government to decide taxability of the tour operator services provided outside the taxable territory and it only enables the Central Government to determine what constitutes export of service, the date for determination of the rate of service or the place of provision of taxable service. It is also submitted that the Delhi High Court took note of the decision rendered by the Customs, Excise and Service Tax Appellate Tribunal in the case of Cox & Kings India Limited Vs. Commissioner [reported in (2014) 35 STR 817 (Tri-Del.)] wherein it was held that service tax cannot be levied with regard to outbound tours arranged for Indians by the Indian tour operators, since it was a service provided outside the taxable territory of India and that the Finance Act did not have extra territorial operation.

7. The learned Senior Counsel has further submitted that in the instant case, the question of production of records does not arise and the petitioners can be called upon to produce the records only in respect of such of the services, which have been rendered by them not covered under the Exemption Notification for the Haj and Umra pilgrimage service.

8. On the contrary, the learned Senior Panel Counsel appearing for the Department would submit that the writ petitions are premature and for the Department to ascertain as to whether the services rendered by the petitioners are taxable or not, the Department is required to examine the documents called for and without doing so, the second respondent cannot be prohibited from exercising his statutory powers. It is submitted that the decision in the case of Indian Association of Tour Operators would not apply, as it only pertains to the services provided by the Indian tour operators to foreign tourists during the period from 01.7.2012 to 01.7.2017, which has been paid in convertible foreign exchange, would not be amenable to service tax. It is further submitted that it is not known as to whether the Revenue has preferred any appeal as against the said decision.

9. After elaborately hearing the learned counsel for the petitioners and the learned Standing Counsel for the respondents and carefully perusing the materials placed on record, this Court is of the view that a Writ of Prohibition at this stage would be premature, as the petitioners, who are all registered under the provisions of the Finance Act and are rendering tour operator services and/or travel agent services, are bound to produce the records before the second respondent for necessary perusal and consequential proceedings.

10. There are two aspects that require to be looked into by the second respondent, if such records are produced. Firstly, if the petitioners have rendered tour operator services and/or travel agent services to other than those, who are either Haj or Umra pilgrims, the second respondent has to examine as to how such transactions have to be assessed. The second aspect is with regard to the services rendered for Indian Haj and Umra pilgrims, who go to Saudi Arabia. To examine both these points, it is essential that records from the petitioners are called for and without examining the records, a decision cannot be arrived at.

11. With regard to the second aspect, namely with regard to the services rendered to Indian Haj and Umra pilgrims, who go to Saudi Arabia, the petitioners' case is that such services are fully exempt by relying upon the Notifications dated 30.10.2009 and 20.8.2014. Apart from that, the petitioners rely upon the decision of the Hon'ble Division Bench of the Delhi High Court in the case of Indian Association of Tour Operators. Even to examine this aspect, necessarily an adjudication process has to be carried out, in which, the petitioners should be given an opportunity to explain as to the applicability of the said decision of the Hon'ble Division Bench of the Delhi High Court.

12. For all the above reasons, the objections raised by the learned Standing Counsel for the respondents, are sustained and in the result, it is held that the writ petitions are premature. This Court does not wish to express anything on the merits of the matter and it is made clear that a decision would be taken by the second respondent in accordance with law after perusal of the documents produced by the petitioners. It is reiterated that on production of the records, the second respondent shall examine as to what are the types of services rendered by the petitioners and in case the second respondent is of the opinion that the services rendered by the petitioners to the Indian Haj and Umra pilgrims are liable for service tax, it is needless to state that the second respondent shall afford an opportunity of personal hearing by way of issuing a show cause notice, so that the petitioners will be able to canvass the contentions raised before this Court in these writ petitions.

13. Hence, this Court holds that the prayer sought for in these writ petitions is premature. Accordingly, the writ petitions are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

14. The petitioners are directed to cooperate with the proceedings before the second respondent and produce all the records with liberty to raise all the legal contentions put forth by the learned Senior Counsel for the petitioners in these writ petitions.

15. After the above order is dictated, the learned Senior Counsel for the petitioners submits that reasonable time may be granted to the petitioners to go before the second respondent for production of records.

16. The petitioners are directed to appear before the second respondent within two weeks from the date of receipt of a copy of this order.

17. The learned Senior Counsel appearing for the petitioners further submits that since the summons have been issued against the petitioners, the petitioners apprehend that coercive action will be initiated. He also submits that since records are not produced, a communication has been sent indicating the statutory powers conferred upon the second respondent.

18. It is needless to add that since the petitioners are to cooperate in the proceedings before the second respondent, no coercive action shall be initiated against them.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

RS

To

1.The Government of India, rep.by
its Secretary, Ministry of Minority
Affairs, Haj Division, ISIL Building,
V.K.Krishnavelan Bhavan, No.9,
Bhagavandas Marg, New Delhi.

2.The Deputy Commissioner (Preventive),
O/o the Principal Commissioner of
GST and Central Excise, Chennai
North Commissionerate, No.26/1,
Mahatma Gandhi Road, Chennai-34.

3. The Commissioner of Service
Tax Appeals I 6/7 A.T.D.Street Race
Course Road Coimbatore.

4. The Superintendent
(Preventive) O/o.The Principal Commissioner
of GST and Central Excise 6/7 A.T.D.
Street Race Course Road Coimbatore

+11 Ccs to Ajmal Associates, Advocate sr 85351.
+1 CC to Mr.K. Raja, Advocate sr 85139.
+1 CC to Ms. Hema Muralikrishnan, Advocate sr 85704.

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SP(21/12/2017)