IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.7682 of 2010

C.E.S. Onyx Pvt. Ltd.,
G1, Karumuttu Centre,
634, Anna Salai
Chennai 600035 ...Petitioner

Vs.

Commissioner of Service Tax,
692, MHU Complex, Nandanan,
Chennai 600035 ...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of prohibition, prohibiting the respondent from taking any action pursuant to the show cause notice bearing C.No.IV/9/253/2009-STC Adj. Dt 25.08.2009.

For Petitioner: Mr.M.S.Krishnan SC for
Mr.P.R.Ranganath

For Respondent : Mr.V.Sundareswaran,
Senior Panel Counsel

O R D E R

The petitioner is C.E.S. Onyx private limited, engaged in the cleaning and sweeping of public roads and streets in the city of Chennai as well as collection and transportation of municipal solid wastes at designated places in the city. The petitioner has registered itself with the Service Tax Department under the head 'cleaning services' and has been duly discharging its liabilities in respect of the activities carried out in commercial and industrial buildings and premises thereof.

2. While this is so, there appears to have been an audit inspection by the authorities of the Service Tax Department. The officials was of the view that the activity of the petitioner ought to be classified under the head 'business auxiliary services'. Notably, the returns of turnover filed by the petitioner, in respect of the receipts from cleaning of commercial and industrial buildings have been accepted and the remittances made have been duly received.

3. Be that as it may, the audit, after inspection, alleged that the activity carried out by the petitioner should be classified under the head 'business auxiliary services' and thus, called upon the Assessing Officer to initiate suitable action in this regard for collection of service charges under the aforesaid head, for the period September 2004 to August 2007.

4. The move of the Audit Department is clearly misconceived on a proper reading and understanding of the definition of 'cleaning activity' in terms of the provisions of the Finance Act, 1994. 'Cleaning activity' is defined under Section 65(24b) as follows:

> 'cleaning activity' means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of-
>
> (i) commercial or industrial buildings and premises thereof; or
>
> (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,
>
> but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying;

5. Thus, the activity of 'cleaning' has been defined and understood to apply qua commercial and industrial as well as related buildings and premises only. The activity of cleaning in relation to all other premises excepting those specifically defined, such as public roads and streets in this city, stand outside the ambit of the definition. I am thus of the view that the receipts from cleaning activities carried out by the petitioner on public roads and streets stand excluded from the ambit of tax, even at the threshold.

6. The counter filed by the respondent dated 25.02.2013 also admits this position at paragraph, 4 where the respondent states thus:

> It is submitted before this Hon'ble Court that since the objection was raised by Central Excise Revenue Audit (CERA), in keeping with extant instructions, Show Cause Notice dated 25.08.2009 was issued as a protective measure notwithstanding the fact that the objection was not accepted by the department. The reply sent to C&AG by the Ministry for not admitting the objection was eventually accepted and the objection (since converted into an Audit Para) has been closed paving the way for the Respondent adjudicating authority to decide the matter as per the legal provision.

7. Thus, it is very clear that the impugned show cause notice, which seeks to bring to tax receipts from cleaning activities carried out by the petitioner in public roads/public

streets, was based on an objection by the audit that has itself not found favour with the Departmental assessing officer, and has subsequently not been pursued. Thus, the impugned show cause notice is set aside and the writ petition, allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Service Tax,
692, MHU Complex, Nandanan,
Chennai 600035.

+1cc to Mr.R.Raghavan, Advocate Sr.78058
+1cc to Mr.V.Sundareswaran, Advocate Sr.78059

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srg 02/12/2019