IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10640 of 2017
and W.M.P.No.11578 of 2017

M/s.Ahlers India Pvt.Ltd.,
Rep.by N.A.Ram Mohan Chief Financial Officer,
Levl 7B, 7th Floor, MC Nicholas Road,
Chetpet, Chennai 600 031. .. Petitioner

vs.

The Principal Commissioner,
Office of the Principal Commissioner of Service Tax,
Service Tax I Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040. .. Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Certiorari, to call for the records of order in original No.CHN-SVTAX-001-COM-61-2016-17 dated 15.12.2016 in C.No.IV/09/57/2016-ST-1 Adj.issued by the respondent and the consequential order in Original (ROM) No.CHN-SCTAX-001-COM-01-2017-18 dated 21.04.2017 passd by the respondent in Application for rectification and quash the same.

(Prayer amended as per order of this
Court dated 22.02.2018 in W.M.P.No.12143
of 2017 in W.P.No.10640 of 2017)

For Petitioner : M/s.Joseph Prabakar

For Respondent : Mrs.Hema Murali Krishnan
Senior Standing Counsel

O R D E R

Heard the learned counsel for the petitioner and the respondent.

2. Short point that arises for consideration in this writ petition is whether the respondent was justified in rejecting the application filed by the petitioner for rectification of mistake in the impugned Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016 and vide impugned Order-in-Original No. CHN-SCTAX-COM-01-Com- -2017-18 dated 21.4.2017.

3. The petitioner was issued to show cause notice to show cause why the petitioner should not be made liable to pay service tax as the service provided by the petitioner was neither in the negative list nor exempted under Mega Exemption Notification No.25/2012 ST dated 20.6.2012.

4. It is the case of the petitioner that it is a multimodal transport service provider and that in terms of Circular No. 197/7/2016-SD dated 12.8.2016 it has been clarified that the service provided by the petitioner was not liable to tax.

5. The case was heard by the respondent and the petitioner was represented by its consultant who was requested to furnish a copy of the multimodal certificate issued by the Director-General of Shipping, Ministry of Shipping, Directorate General of Shipping.

6. The petitioner's consultant appears to have forwarded only the certificate of renewal effective from 25.6.2014. Under these circumstances, the demand was partly dropped and partly confirmed vide Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016. By the said order, an equal amount of penalty and interest was demanded.

7. Under these circumstances, the petitioner filed an application for rectification of mistake and stated that the petitioner was holding a certificate of registration as a Multimodal Transport Operator all through the period and that there was a mistake on the part of its consultant in enclosing

the original certificate only for the period commencing from September 2014and therefore the order passed by the respondent Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016 be rectified. The petitioner filed the above application on 8.2.2017. Since no orders were passed, the petitioner filed the present writ petition.

8. Pending disposal of the present writ petition, the respondent passed the 2nd impugned Order-in-Original No.CHN-SCTAX-COM-01-Com--2017-18 dated 21.4.2017. Under these circumstances, the petitioner filed W.M.P.No. 12143 of 2007 to amend the prayer to quash the consequential impugned Order-in-Original No.CHN-SCTAX-COM-01-Com--2017-18 dated 21.4.2017 also along with Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016. This application to amend the prayer was allowed by an order of this court on 22.2.2018.

9. The respondent has rejected the application for rectification vide Order-in-Original No.CHN-SCTAX-COM-01-Com-2017-18 dated 21.4.2017 on the ground that the failure on the part of the consultant to furnish the original certificate did not warrant an order under section 74 of the Finance Act, 1994 for rectification of mistake In the counter filed on behalf of the respondent it is submitted that there is no error apparent of the face of record in the order passed originally on 15.12.2016 and therefore there was no ground to rectify the said order as the petitioner failed to submit the correct certificate in time.

10. Learned counsel for the respondent further submits that petitioner has an alternate remedy by way of an appeal against the impugned orders and therefore therefore the impugned orders are liable to be sustained.

11. I have considered the arguments of the petitioner and the respondent. The demand that was originally proposed in the show cause notice was for an amount of Rs. 15,83,93,310/-for the period commencing from January, 2013 to March, 2015. It was partially dropped on the strength of the certificate produced by the petitioner for the period commencing from 28.9 2014 and therefore the demand for the period prior to aforesaid date for an amount of 13,14,78,090/- i.e between January, 2013 to September, 2014 has been confirmed in Order-in-Original No.CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016 while demand for the

period thereafter for an amount of Rs.2,69,15,220/- was dropped.

12. It is noticed that the petitioner was issued with a certificate of registration as the multimodal transporter under the provisions of the Multimodal Transport Operators Rules, 1992 with effect from 28.9.2005. The respondents have also not denied the same except to state that the said certificate and the subsequent renewal obtained by the petitioners were not filed before the respondent and therefore the order passed by the respondent in Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016 and the subsequent rejection of the application under section 74 of the Finance Act, 1994 vide Order-in-Original No. CHN-SCTAX-COM-01-Com- -2017-18 dated 21.4.2017 cannot be faulted.

13. The fact remains that the petitioner has given partial relief on the strength of the renewal is a certificate for the period after September 2014. Since there is a bona fide mistake and but for the non-filing of the original certificate of registration issued to the petitioner for the earlier period, the demand would not have been confirmed. I'm therefore convinced that the petitioner is entitled to the relief.

14. Merely because renewal certificate for the earlier period was not produced earlier cannot mean that the order cannot be rectified under section 74 of the Finance Act, 1994. Ultimately, it is the duty of the respondent to pass a fair order and it is no part of the duty to deny the benefit which was legitimately available to the petitioner if materials were brought to the knowledge of the respondent though subsequently.

15. Therefore, both the impugned orders i.e the 2nd mentioned order Order-in-Original No. CHN-SCTAX-COM-01-Com- -2017-18 dated 21.4.2017 in which the 1st mentioned Order-in-Original No. CHN-SCTAX-001-Com-61-2016-17 dated 15.12.2016 had merged are liable to be quashed to the extent they confirm the demand.

16. Therefore, while quashing the impugned orders and allowing the writ petition with liberty is given to the respondent to call upon the petitioner to pay the tax for services if any which are outside the purview of the Circular No.197/7/2016-ST dated 12.8.2016 issued by the Department of

Revenue after due notice to the petitioner. This exercise shall be carried out within a period of three months from the date of receipt of a copy of this order.

17. The Writ petition stands allowed with the above observation. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vv2/kkd

To

The Principal Commissioner,
Office of the Principal Commissioner of Service Tax,
Service Tax I Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai 600 040.

+1cc to M/s.Joseph Prabakar, Advocate sr.103522
+1cc to Mrs.Hema Murali Krishnan, Advocate sr.103590

W.P.No.10640 of 2017
and W.M.P.No.11578 of 2017

bp(co)
nr 31/01/2020