IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.12291 of 2006
and
W.P.M.P.No.13879 of 2006

M/s. Frontier Life Line (P) Ltd.,
Rep. by its Chairman Dr. K.M.Cheran,
R.30-C, Ambattur Industrial Estate,
Mogappair, Chennai - 600 101. ... Petitioner

-vs-

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Koyambedu Assessment Circle,
Chennai - 600 095. ... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Second Respondent in his notice in TNGST 1344665/2004-05 dated 30.03.2006 and quash the same as illegal and to issue any further direction or order as this Court may deem fit.

For Petitioner : Mr.B.Dhanraj for
Mr.S.Ramanathan

For Respondents: Mrs.G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr.B.Dhanraj, Learned Counsel appearing for the Petitioner and Mrs.G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Notice No. TIN: 1344665/2004-05 dated 30.03.2006 issued by the Second Respondent, which is evidently a show cause notice for which the Petitioner has been required to submit its explanation. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulum Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha (AIR 2012 SC 2250) and Life Insurance Corporation of India -vs- A.Masilamani [(2013) 6 SCC 530] that a show cause notice cannot be challenged before completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion.

3. It has been also brought to notice that in MIOT Hospitals Ltd., -vs- State of Tamil Nadu (Order dated 28.05.2020 in W.P. No. 2982 of 2012 etc., batch), this Court in respect of similarly placed persons, who are running hospital like the Petitioner in this case, has held as follows:-

> "198. In my view, there is not only transfer of possession of prosthetics into the physiology of the patient but also the ownership of such prosthetics to the patient for consideration in the course of the provision of medical/health service. Similarly, in the course of taking x-ray, scan, MRI/CT Scan for such in-patient, cost of which get included into the package are taxable as such activity can be termed as the processing of moveable property.
>
> 199. As the notices also deal with other issues, I leave it open for the petitioners to give a proper reply to the respective notices impugned on those aspects."

4. Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for this Court to interfere at this pre-mature stage of the matter.

5. It is incumbent upon the Petitioner to submit its explanation with all supporting documents and comply with the requirements as sought in the impugned order by 30.11.2020. The Second Respondent shall, after affording full opportunity of hearing, duly consider the explanation of the Petitioner, deal with the each of the contentions raised and pass reasoned orders on merits and in accordance with law and communicate decision taken under written acknowledgment. In the event of any decision

entailing adverse civil consequences, it would be certainly open to the Petitioner to impeach the same before the proper forum in the manner recognized by law. Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

6. In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Koyambedu Assessment Circle,
Chennai - 600 095.

+1cc to Mr.B.Dhanraj, Advocate, S.R.No.35949
+1cc to the Special Government Pleader, S.R.No.35572

W.P.No.12291 of 2006

RLD(CO)
CS/11/11/2020