IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.06.2021

Coram

The Honourable Mr. Justice V.PARTHIBAN

W.P.No.12081 of 2021
and
W.M.P.Nos.12856 & 12857 of 2021

M/s. Chennai Citicentre Holdings Prvt.Ltd.,
(represented by tis General Manager)
Nos.10 & 11, Radhakrishnan Salai,
Mylapore, Chennai - 600 004. ... Petitioner

Vs.

1. Principal Additional Director General,
Directorate of GST Intelligence,
Chennai Zonal Unit,
5th Floor, Tower-II, BSNL Building,
No.16, Greams Road,
Chennai - 600 006.

2. Commissioner of GST and Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Salai,
Nungambakkam,
Chennai - 600 034. ...Respondents.

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari. And quash the impugned show cause notice bearing No.68/2020 dated 31.12.2020 issued by the first respondent as the same being contrary to the provisions of Section 66 B read with Section 65B (44) and Section 67 of the Finance Act, 1994 and ultra vires to Articles 19(1)(g), 246 and Article 265 of the constitution of India.

For Petitioner .. Mr.S.Jaikumar

For Respondents .. Mr.Hema Muralikrishna
Standing Counsel

ORDER

The matter is taken up through web hearing.

The case of the petitioner is that they are owners of the Shopping Complex known as Chennai Citi Centre located at No.10 & 11, Radhakrishnan Salai, Mylapore, Chennai - 600 004. The Centre has entered into various lease agreements with very many retailers who have set their outlets in the shopping mall and the lessees under the agreement are bound to pay to the lessor proportionate share of the maintenance charges at actuals. The petitioner has also installed a separate meter for calculating the electricity consumed by each lessee for the respective rental premises. The petitioner is registered for payment of Service Tax and the petitioner has been paying the Service Tax on the monthly lease rentals and the maintenance charges collected from the lessees. However, the petitioner has not been paying the service tax for the amount collected towards Electricity consumed by the lessees on the ground that a separate meter has been installed for each of the lessees and the amount payable by the lessees would be calculated on the basis of the charges paid by the petitioner to the TANGEDCO and the amount would be reimbursed by the lessees.

2. While the matter stood thus, a show cause notice was issued on 31.12.2020 demanding Service Tax to the tune of Rs.1,94,78,868/- in respect of the electricity charges collected from the petitioner's lessees and further Service Tax to the tune of Rs.18,18,576/-. Notice was also proposed to demand interest and also penalty. Assailing the above said show cause notice, the petitioner is before this Court.

3. This Court is unable to appreciate as to how the present writ petition is maintainable for the simple reason that the impugned proceedings is only a show cause notice calling upon the petitioner to show cause as to why the Service Tax is not recoverable from them. Instead of responding to the notice, the petitioner has rushed to this Court by invoking the extra ordinary remedy under Article 226 of the constitution of India.

4. It is trite in law to hold that when a show cause notice is issued, the petitioner is legally bound to answer to the show cause notice and only when the explanation of the petitioner is not considered favourably and any adverse order is passed, then it is open to the petitioner to work out their remedies in a manner known to law. It is certainly not open to the petitioner to challenge the show cause notice itself before this Court and make an attempt to convince this Court on the factual submissions as to the maintainability of the show cause notice.

Such course is certainly not legally open to the petitioner. In any event, the grounds raised in the writ petition are legally unacceptable at this stage and this Court is firmly of the view that the writ petition is premature and is liable to be rejected. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsi
To
1. Principal Additional Director General,
Directorate of GST Intelligence,
Chennai Zonal Unit,
5th Floor, Tower-II, BSNL Building,
No.16, Greams Road,
Chennai – 600 006.

2. Commissioner of GST and Central Excise,
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Chennai – 600 034.

+1cc to Mr. V. Sundareswawan, Advocate SR.No. 27497

W.P.No.12081 of 2021

GSM(CO)
A.SK(15.07.2021)