IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19763 of 2021
and
W.M.P.No.21039 of 2021

(Through Video Conferencing)

M/s. S.A. Foundations Pvt. Ltd.,
No.29.II Floor, North Usman Road,
T. Nagar, Chennai - 600 017
Rep.by its Director V. Sudhakar

... Petitioner

Vs

The Assistant Commissioner of GST & Central Excise
Triplicane Division, Chennai North Commissionerate
Nungambakkam, Chennai - 600 034.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to Order in Original No.03/2021 dated 12.07.2021 passed by the respondent herein and to quash the same for having been passed without jurisdiction and in excess of the authority conferred on the said respondent and also contrary to law and in total violation to the principles of natural justice.

For Petitioner : Mr. N. Viswanathan

ORDER

The petitioner has filed this writ petition against the Order in Original No.03/2021, dated 12.07.2021 by the respondent.

2. The case of the petitioner is that the impugned order has been passed by the respondent without jurisdiction and is contrary to the provisions of the Place of Provision of Services Rules, 2012. A specific reference is made to Rule 5 which reads

as under.

> ''5. Place of provision of services relating to immovable property:
>
> The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.''

3. That apart, it is submitted that the petitioner has merely joined hands with two other owners and sold about 19.07 acres of land, of which, 5.43 acres belongs to the petitioner.

4. The learned counsel for petitioner submits that the activity undertaken by the petitioner does not amount to service within the meaning of Section 65 (B) (44) which specifically excludes a transfer of title and goods or immovable property by way of sale, gift or in any other manner.

5. The learned counsel for petitioner further submits that the petitioner has also questioned the jurisdiction of the respondent on the issuance of show cause notice who has also passed the impugned order being contrary to Rule 5 of the Place of Provisions of Service Rules, 2012.

6. The learned counsel for the petitioner placed reliance on several decisions of the Tribunal to persuade the Court to come to a conclusion that the impugned order passed by the respondent is without jurisdiction and therefore, the impugned order is liable to be quashed.

7. Heard the learned counsel for the petitioner.

8. There is no merits in this writ petition. It is for the petitioner to convince the appellate authority to come to a conclusion that neither the petitioner has provided any taxable service within the meaning of Section 65 (B) (44) of the Finance Act, 1994 or that the service provided by the petitioner well within the negative list under Section 65 (D) of the Finance Act, 1994 or was exempted under the Mega Exemption notification issued by the Central Government under Section 93 of the Finance Act, 1994.

9. It is also open for the petitioner to make out a case as

to whether the show cause notice issued by the respondent on 16.04.2019 was contrary to Rule 5 of the Place of Provisions of Service Rules, 2012 or whether the respondent was justified by concluding with the place of service would be location of the respondent of the service as there are disputed question of facts have to be determined only by the authorities acting under the hierarchy Act. All these issues and facts will have to be settled up to the stage of the Tribunal and thereafter, if the petitioner is aggrieved, the petitioner can file an appeal before the High Court or Hon'ble Supreme Court depending upon the nature of the case.

10. Since the involves the disputed question of facts as to which any service was provided or not. Therefore, I am not inclined to admit this writ petition. Further, the petitioner has an alternate remedy by way of an appeal. Accordingly, this Writ Petition is dismissed with liberty to the petitioner to file statutory appeal before the Appellate Commissioner, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssn/nst

To:

The Assistant Commissioner of GST & Central Excise
Triplicane Division, Chennai North Commissionerate
Nungambakkam, Chennai - 600 034.

W.P.No.19763 of 2021
and
W.M.P.No.21039 of 2021

SPD(CO)
SU(13/12/2021)