APO No. 15 of 2019
with
WPO No. 1114 of 2009
IN THE HIGH COURT OF CALCUTTA
In appeal from its
CONSTITUTIONAL WRIT JURISDICTION
CIVIL APPELLATE JURISDICTION

Commissioner of Service Tax, Kolkata

Versus

M/s. Simplex Infrastructure Ltd. & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice SUBHENDU SAMANTA
Date: 23rd August 2022

Appearance:
Mr. K. K. Maiti, Advocate
for the appellant

Mr. J. P. Khaitan, Sr. Advocate
Ms. Nilanjana Banerjee, Advocate
for the respondents

The Court: This is an appeal from a judgment and order dated 12th December 2018 preferred by the Commissioner of Kolkata South CGST and CX, Kolkata. It was made by a learned single judge of this court in exercise of his writ jurisdiction in WP No. 1114 of 2009 connected with GA no. 2368 of 2018 (M/s. Simplex Infrastructures Ltd. & Anr. vs. Commissioner of Service Tax Commissionerate, Kolkata & Ors.). By the impugned judgment and order the show cause-cum-demand notice dated 7th September 2009 was quashed. "All consequential steps" taken further to the show cause-cum-demand notice including the order in original dated 6th February 2012 were also quashed.

The plain and simple question which arose before this court was whether the appellant had the jurisdiction to issue the show cause and demand notice in question. The show cause notice alleged that the four works contract between the parties entered into between 10th September 2004 and 15th June 2005 were exigible to service tax. Service tax was demanded from the respondent.

The learned judge allowed the writ application on the admitted facutal position that the contract between the parties was an indivisible works contract. According to the decision of the Supreme Court in Commissioner of Central Excise and Customs, Kerala vs. Larsen & Toubro Limited (2016) SCC vol. 1 page 170, at the material point of time an indivisible works contract was not exigible to service tax.

The learned judge has specifically noted in the judgment that there was no dispute between the parties with regard to the fact that the contract was indivisible. In fact Mr. Khaitan, learned senior advocate for the respondent submitted that this position was accepted by the appellant in the show cause notice and in the affidavit-in-opposition to the writ petition and was never disputed elsewhere. The learned single judge, therefore, rightly observed that there was “no dispute with regard to the classification of the goods”.

On these admitted facts the show cause notice alleging that the respondent was liable to pay service tax and demanding it from them was ex facie without jurisdiction. If the show cause notice is without jurisdiction, the jurisdiction of this court under Article 226 of the Constitution of India can be invoked by an injured party straightway without resorting to any alternative remedy. Hence we do not accept the contention of Mr. Maiti, learned advocate for the appellant that the court should have relegated the respondent to the alternative remedy of adjudication of the show cause before a departmental officer.

Since the facts are admitted it could not be said that this court had entertained disputed facts in a writ application. If the facts are admitted and a public law element is involved the court under Article 226 has jurisdiction to entertain the issues between the parties.

For these reasons, we find no merit in this appeal. We dismiss it, affirming the impugned judgment and order dated 12th December 2018.

No order as to costs.

(I. P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)

R. Bose