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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.28292 OF 2021

AND

W.M.P.NO.29874 OF 2021

(Through Video Conferencing)

Unic Associates,
Represented by its Partner Anil Mathew,
W-754/C, 4th Avenue,
Anna Nagar West (Extension),
Chennai - 600 101.

...Petitioner

Vs.

1.The Commissioner of GST & Central Excise (Appeals-I),
Office of the Commissioner of GST & Central
Excise (Appeals-1),
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner of GST and Central Excise,
Office of the Principal Commissioner
of GST and Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records relating to Order-in-Original No.9-12/2021-CH.N (ADC) dated 03.03.2021 passed by the second respondent and the consequential Order-in-Appeal Nos.107-109/2021 (CTA-I) dated 30.07.2021 passed by the first respondent and quash both the orders as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel



ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel takes notice on behalf of the respondents.

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2. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

3. The petitioner has filed this writ petition against impugned Order-in-Appeal Nos.107-109 of 2021 (CTA-I) dated 30.07.2021 wherein part of the appeal filed by the petitioner against the Order-in-Original Nos.9-12 of 2021 CH.N (ADC) dated 03.03.2021 has been partly dropped or partly allowed.

4. The learned counsel for the petitioner submits that the original proceeding emanates from the Show Cause Notice dated 06.10.2010 and subsequent Statement of Demand issued as per the provisions of the Finance Act, 1994.

5. The learned counsel for the petitioner submits that as far as the last Statement of Demand is concerned, the demand proposed has been dropped. As far as the second Statement of Demand is concerned, it is submitted that the petitioner has paid the service tax and the amount paid by the petitioner has also been appropriated. As far as the third Statement of Demand is concerned, it is submitted that the department has confirmed the penalty.

6. The petitioner is aggrieved by only the demand confirmed as far as the demand proposed in the Show Cause Notice dated 06.10.2010. It is submitted that the Show Cause Notice has been adjudicated by the second respondent original authority long after the issuance of Show Cause Notice dated 06.10.2010 and the impugned order dated 03.03.2021 and therefore, in the light of Well-settled Principles of Case Laws that such proceedings completed long after the issue of Show Cause Notice are to be quashed (as having passed) in Violation of Principles of Natural Justice notwithstanding the fact that the petitioner had preferred an appeal and suffered an adverse order before the Appellate Commissioner.

7. That apart, on merits, the learned counsel for the petitioner submits that the proposal in the Show Cause Notice was that the petitioner has rendered itself liable to Service Tax under Section 65(105) (zzzh) of the Finance Act, 1994 whereas the demand has been confirmed under Section 65(105) (zzq) of the Finance Act, 1994.

8. It is the case of the petitioner that the work carried out by the petitioner was not liable to tax during the period in



dispute as the work involved "works contract" and was liable to service tax for the first time with effect from 01.07.2007 with the insertion of Section 65(105) (zzza) of the Finance Act, 1994.

9. Though elaborate arguments were advanced by the learned counsel for the petitioner on merits and appear to be attractive, it is noticed that the petitioner has an alternate remedy by way of a statutory appeal before the Tribunal, which is more efficacious remedy than under Article 226 of the Constitution of India.

10. The issue as to whether the petitioner had rendered taxable service under Section 65(105) (zzzh) as was proposed in the Show Cause Notice and later proposed in the three Statement of Demand issued for the subsequent period or whether the petitioner had rendered taxable service under Section 65(105) (zzq) or that the service was that of a "works contract" and that the petitioner was liable to pay service tax on such services only with effect from 01.07.2007 is a question of fact. This has to be resolved only by the Tribunal. Only the Tribunal can decide the same after perusing the records. The Tribunal, being the final fact finding authority, will determine the question of facts and arrive at a conclusion on law. In case the petitioner is aggrieved by any such order of the Tribunal, the petitioner has an alternate remedy before the High Courts and the Hon'ble Supreme Court under the provisions of the Finance Act, 1994 read with Central Excise Act, 1944.

11. Considering the same, I do not find any merits in this writ petition. Before parting with this order, I would like to stress that the authorities under the Acts overburdened with litigation and it may not be fair to hold that the orders passed long after issuance of Show Cause Notice would be in Violation of Principles of Natural Justice. Nothing precluded the petitioner from knocking the doors of the Court under Article 226 of the Constitution of India for a Mandamus to direct the respondents to complete the assessment or bring a closure to the issue. The petitioner is equally guilty of the delay in not asking the respondents to pass an order earlier.

12. This Writ Petition stands dismissed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

rgm/arb



To

1.The Commissioner of GST & Central Excise (Appeals-I),
Office of the Commissioner of GST & Central
Excise (Appeals-1),
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
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2.The Additional Commissioner of GST and Central Excise,
Office of the Principal Commissioner
of GST and Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1cc to M/s.Hema Muralikrishnan, Senior Standing Council,
Sr.No.990

+1cc to Mr.Joseph Prabakar, Advocate Sr.No.1355

W.P.No.28292 of 2021 and
W.M.P.No.29874 of 2021

SRA (CO)
RVM(27/01/2022)