



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.2133 of 2021

and

W.M.P. (MD) No.1798 of 2021

WEB COPY

PEETEE Coach Builders Private Limited,
S.F.No.647 648, Coimbatore Road,
Andankoil East Post,
Karur-639 002,

represented by its

Managing Director, T.Muruganandam

... Petitioner

/vs./

1.Union of India,
represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.

2.The Chariman,
Central Board of Indirect Taxes and Customs,
North Block, New Delhi 110 001.

3.Goods and Services Tax Council (GST Council),
through its Secretary,
5th Floor, Tower II, Jeevan Bharti Building,
Janpath Road, Connaught Place,
New Delhi 110 001.

4.The Commissioner of GST & Central Excise,
No.1, Williams Road,
Cantonment,
Tiruchirapalli 620 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling upon the records matter of show cause Notice C.No.GEXCOM/ADJN/GST/ADC/20/2020-ADJN Dated 15-12-2020 on the file of the 4th respondent and Quash the same.

For Petitioner : Mr.J.V.Niranjan

For R1 : Mr.S.Sivakumar
Central Government Standing Counsel

For R2 to R4 : Mr.K.Prabhu
Junior Standing Counsel



ORDER

The petitioner has challenged the impugned show cause notice dated 15.12.2020 of the 4th respondent on the ground that the impugned notice is contrary to the circular No.52/26/2018-GST, dated 09.08.2018 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi. A Specific reference was drawn to paragraph No.12 from the said circular, which reads as under:-

"12.1.Applicable GST rate for bus body building activity:- Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2.Buses (motor vehicles for the transport of ten or more persons, including the driver) fall under headings 8702 and attract 28% GST: Further, chassis fitted with engines (8705) and whole bodies (including cabs) for buses (8707) also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:-

a) Bus body builder a bus, working on the chassis owned by him and supplies the built-up bus to the customer and charges the customer for the value of the bus.

b) Bus body builder builds body on chassis provided by the principal for bodybuilding and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3.In the above context, it is hereby clarified that in case as mentioned at para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @ 28%. In the case as mentioned at para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly."

2.The learned counsel for the petitioner has also drawn attention to the terms and conditions of the tender, which stated that the petitioner is engaged in job work service and merely carries on the bodybuilding on the chassis and therefore, the petitioner is not liable to pay tax at proportionate rate of 28% as has been proposed in the impugned show cause notice. It is submitted that the impugned show cause notice being contrary to the above circular is thus without jurisdiction and is therefore liable to be quashed.



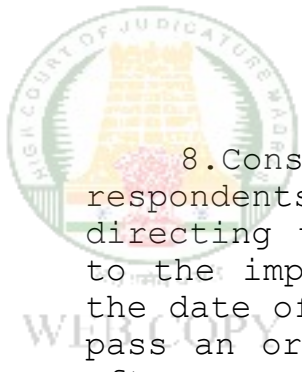
3.The learned counsel for the petitioner further submits that even in the counter, the 4th respondent has admitted in the counter that the petitioner is merely engaged in bodybuilding activity on the chassis supplied by the State Transport Corporation and therefore, the attempt of the respondents is to distinguish above cited circular was unwarranted. It is submitted that the stand of the respondents was clear in the counter and therefore, the respondents will confirm the demand proposed in the show cause notice.

4.Opposing the prayer, the learned counsel for the respondents jointly submits that the writ petition is liable to be dismissed as the petitioner has an alternate remedy before the 4th respondent, who has issued the impugned show cause notice. It is open for the petitioner to file a reply citing the above mentioned circular. It is submitted that the writ petition is premature. It is therefore submitted that the writ petition is liable to be dismissed. In this connection, the learned Central Government Standing Counsel for the 1st respondent has relied on the decision of the Hon'ble Supreme Court in Civil Appeal No.2276 of 2019 (**Union of India and others Vs. Coastral Container Transporters Association and others**), dated 26.02.2019.

5.I have considered the arguments advanced by the learned counsel for the petitioner, learned Central Government Standing Counsel for the 1st respondent and the learned Junior Standing Counsel for the respondents 2 to 4.

6.The petitioner has challenged the impugned show cause notice on the strength of circular No.52/26/2018-GST, dated 09.08.2018 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi. The impugned show cause notice, which has been issued by the 4th respondent under Sections 73 and 74 of the GST Act, 2017 cannot be said to be without jurisdiction merely because on merits there is a clarification of CBIC Circular No.52/26/2018-GST dated 09.08.2018. This circular is binding on the authorities as per the decision of the Hon'ble Supreme Court in the case of **Collector of Central Excise, Vadodra Vs Dhiren Chemical Industries** reported in (2002) 2 **Supreme Court Cases 127**. These circulars are however not binding on the Courts as per the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries** reported in (2008) 13 SCC 1.

7.Even as the decisions referred by the learned counsel for the respondents, it has been observed that it is true that the circular issued by the CBIC are binding on the authorities, however whether the circular is applicable or not is a matter, which has to be considered on merits of the facts and circumstances of the case.



8.Considering the fact that the circulars are binding on the respondents, I am inclined to disposed of this writ petition by directing the petitioner to file a reply before the 4th respondent to the impugned show cause notice within a period of 60 days from the date of receipt of a copy of this order. The 4th respondent shall pass an order independently within a period of 30 days thereafter, after considering the applicability of clarification in Circular No.52/26/2018-GST, dated 09.08.2018 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, New Delhi to the facts of the case. It is needless to state that before passing such orders, the petitioner shall also be heard.

9.The writ petition stands disposed of, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

+1 CC to M/s.K. PRABHU, Advocate (SR-16928[F] dated 06/04/2022)

+1 CC to M/s.S. SIVAKUMAR, Advocate (SR-17264[F] dated 07/04/2022)

W.P. (MD) No.2133 of 2021
06.04.2022

SS/25.04.2022 : 4P/3C