

01.05.2023

Sl no. 2-4

Ct no. 2

P.M.

WPA 6881 OF 2023

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WPA 6882 OF 2023

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WPA 6887 of 2023

Utpal Kumar Guha

- Vs -

**Principal Commissioner of CGST &
CX, Kolkata South & Ors.**

Mr. Pranab Kumar Datta, Sr. Adv.
Mr. Saurabh Bagaia,
Mr. Indranil Banerjee,
Mr. Subrata Mukherjee,
Mr. Soumyajit Mishra
... for the petitioner

Mr. Raj Kumar Sain
... for Union of India in WPA 6882 of 2023.

Mr. Rameshwar Sinha
... for Union of India in WPA 6881 of 2023
& WPA 6887 of 2023.

Mr. Anirban Ray, Ld. Govt. Pleader
Mr. D. Ghosh,
Mr. N. Chatterjee,
Mr. D. Sahu
... for the State.

Mr. K K. Maiti,
Mr. Tapan Bhanja
... for respondent CGST authority

Mr. Ashoke Kumar Banerjee, Sr. Adv.
Mr. Alope Kumar Ghosh,
Mr. Biswajit Mukherjee,
Mr. Arijit Dey,
Mr. Avra Mazumdar
... for KMC

Heard learned advocates appearing for the parties.

Pursuant to the earlier direction of this Court dated 26th April 2023, Mr. Maiti, learned advocate

appearing for the respondent CGST authority has filed a copy of the objection and written submission filed by the KMC in the impugned adjudication proceeding.

By these writ petitions, petitioners have challenged the impugned orders in original, passed by the Principal Commissioner concerned under the relevant provisions of CGST Act and Finance Act confirming the demand of service tax against the petitioner and other directions/orders by holding that petitioner is liable to pay service tax to the recipient, Kolkata Municipal Corporation (KMC) etc., on the alleged ground of violation of principle of Natural justice by not providing the petitioners the copies of objection and written submission filed by the KMC in course of the impugned proceedings. First of all the impugned order is an appellable order under the statute and the impugned order as it appears on perusal of the same is an elaborate speaking order containing the facts and laws raised by both the KMC and the petitioner. Secondly it is not a case where impugned order has been passed by an authority having lack of jurisdiction. Thirdly in this case the impugned order has been passed after giving opportunity of personal hearing to the

petitioner and after considering the objection / written statement filed by the petitioners. So question of violation of principle of natural justice in the case of the petitioners does not arise at all since it is not a case that the issues which have been considered were not indicated in the show-cause notice. Merely by contending that the time of hearing for the KMC and the petitioners were different and that the objection and the written submission filed by the KMC who is also interested party was not furnished to the petitioners is hyper-technical ground and cannot be called a case of violation of principle of natural justice or that there was procedural irregularity in course of the impugned adjudication proceeding. Petitioners should have no grievance, if the KMC who is also an interested has been allotted a different time slot for hearing. Petitioners should have concerned only to the extent as to whether petitioners were issued any show-cause notice or not before passing the impugned adjudication order and whether any opportunity of filing any objection to the show-cause notice was given to them or not or any personal hearing was given or not and that all the contentions raised by them in their objection and written submission has

been dealt with in the adjudication order or not and I find that all these formalities have been observed and there is no violation in these regards by the adjudicating authority and furthermore petitioner could not show that on the issues on merit of the adjudication order, there is any bar on the appellate authority to consider and decide the same.

In view of the discussion made above without going into the merits of the adjudication order, on the ground of availability of alternative remedy by way of statutory appeal these writ petitions being WPA 6881 of 2023, WPA 6882 of 2023 and WPA 6887 of 2023 are dismissed.

Since this order has been passed at motion stage without calling for affidavit, the allegation raised in these writ petitions should be deemed to be have denied by the respondents.

(Md. Nizamuddin, J.)