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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

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

W.P.No.11136 of 2022
and WMP.No.10725 of 2022

SIP Academy India Pvt Ltd.,
Represented by its Director Ms.Sarala Kulasekaran
... Petitioner

Vs

The Additional Commissioner
Office of the Principal Commissioner of CGST and Central Excise
Chennai North Commissionerate
No.26/1/Mahatma Gandhi Road,
Chennai – 600 003. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the in Order in Original in Order in Original No.42 to 45/2022 CH.N.(ADC) dated 03.03.2022 passed by the respondent and to quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Gurumoorthy, JSC.

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ORDER

The petitioner is aggrieved by the impugned Order in Original No.42 to 45/2022 CH.N.(ADC) dated 03.03.2022. By the impugned order, the proposals in Show Cause Notices following these Statement of Demand (SOD) have been confirmed :-

Sl.No.	***Period***	***SCN / SOD No & date***	***Value of services (Rs.)***	***Services tax payable (Rs.)***
1	Jan 2006 to March 2009	SCN No.199/2010-STC ADJ		97,97,959/-
2	April 2010 to March 2011	SCN No.58/2012 dated 27.03.2012	10,54,90,229	1,08,65,493/-
3	April 2011 to March 2012	SOD No.28/2013 dated 12.03.2013	12,25,57,451	1,26,23,417
4	April 2012 to Jun 2012	SOD No 02/2014 dated 10.01.2014	3,79,96,847	49,96,410

2. SCN No.199/2010-STC ADJ dated 15.04.2020 was issued under Proviso to Section 73(1) along with interest under Sec 75 of the Finance Act, 1994. Periodical SODs were issued to the assessee as detailed above demanding Service tax from petitioner under "Commercial Coaching Service" based on the month wise details furnished by the assessee.

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3. The case of the petitioner appears to be that as far as first show cause notice is concerned in SCN.No.199/2010-STC Adj dated 15.04.2010, the said show cause notice has been issued invoking larger period of limitation, on the ground that the petitioner was providing franchise service.

4. It is submitted that an identical issue was earlier confirmed by the Additional Commissioner of Service Tax, Chennai vide Order in Original No.12/2007 dated 30.03.2007. The petitioner had filed an appeal before the Appellate Commissioner who by Order in Appeal No.64/2008 (M-ST) dated 21.11.2008 transferred the case to the call book. It is submitted that vide order in appeal No.63/2010 (M-ST) dated 26.03.2010, the Commissioner of Central Excise (Appeals) allowed the appeal of the petitioner.

5. The learned counsel for the petitioner further submits that a part of the demand covered by SCN.No.199/2010-STC Adj dated 15.04.2010 was also barred by limitation interms of the decision of the Hon'ble Supreme Court in the case of ***Nizam Sugar Factory Vs.Collector of***

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Central Excise, A.P. reported in ***2006 (197) ELT 465 (SC)***.

6. As far as the demand that has been confirmed in respect of rest of the three SCN Statement of Demand (SOD) are concerned, it is submitted that the proposal in the notice was that the petitioner was providing "Commercial Coaching Services" during the period in dispute mentioned above. It is submitted that the issue is squarely covered by a decision of the Tribunal in the case of ***K.K.Academy Pvt Ltd., V. Commissioner of Service Tax, Chennai*** reported in ***2011 (24) STR 702 (Tri-Chennai)***, wherein the Tribunal had followed its earlier order in ***Fast Arithmetic V. Assistant Commissioner of C.Ex.ST, Mangalore*** reported in ***2010 (17) STR 158***.

7. The learned counsel for the petitioner further submits that the respondent in the counter also admitted that the department has accepted the decision of the Tribunal case referred to supra as the appeal against the said order was withdrawn on similar issue in the case of ***K.K.Academy Pvt Ltd., V. Commissioner of Service Tax, Chennai 2012 (27) STR J79 (SC)***. Hence, it is submitted that the 2nd show cause notice

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and two other SOD as Sl.No.2, 3, 4 of the above table, apart from being contrary to the proposal contained in respective SCN and SOD, the issue is also squarely covered against the review in view of decision of the Tribunal, which decision has been accepted by the department, in as much as, the appeal against the decision of the Tribunal in ***K.K.Academy Pvt Ltd., V. Commissioner of Service Tax, Chennai 2012 (27) STR J79 (SC)*** was withdrawn as admitted in paragraph 6.3 of the Counter affidavit filed by the respondent.

8. The learned counsel for the petitioner would submit that even otherwise on merits, the petitioner is entitled for exemption under notification No.9/2003- ST dated 26.03.2003 and 24/2004-ST dated 10.09.2004.

9. The learned counsel for the petitioner submits that during personal hearing on 09.09.2011, the petitioner requested for time. However, the impugned order has been passed without granting time. It is further submitted that the petitioner had been requesting the respondent to give particulars of the alleged order of the Tribunal

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reversing the order of the Appellate Commissioner in Order in Appeal.No.63 of 2010 (MST) dated 26.03.2010. However, the department has failed to furnish the same and without furnishing the details, the impugned order has been passed.

10. The learned counsel further submits that out of Rs.97,97,959/- in the first mentioned show cause notice, the petitioner has paid substantive portion of the demand of Rs.42,45,614/- for the period which is against barred by limitation.

11. On the other hand, the learned counsel for the respondent submits that there are several disputed question of facts. In this connection, a reference was made to the break up in SCN.No.58 of 2012 dated 27.03.2012 wherein there are several receipts which have been brought to tax. It is therefore submitted that these are the matters which has to be decided by the Appellate Commissioner and Tribunal. It is submitted that the orders were not passed earlier as the case was transferred to call book, in view of the pendency of the issue before the Hon'ble Supreme Court against the order passed by the Tribunal in

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K.K.Academy Pvt Ltd., V. Commissioner of Service Tax, Chennai 2011 (24) STR 702 (Tri-Chennai) has been stated in the counter and the said appeal was withdrawn on 18.11.2020 on account of monetary policy

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel for the respondent.

13. The respondent was duty bound to inform the petitioner about the fate of Order in Appeal No.63 of 2010 (M-ST) dated 26.03.2010 as to whether the said order was appealed before the appellate Tribunal and whether the order of the Appellate Commissioner in Order in Appeal No.63 of 2010 (M-ST) dated 26.03.2010 which remanded back to the original authority was disturbed or not.

14. The impugned order appears has to be passed in a hurried manner without furnishing the details called for by the petitioner, as is evident from reading of the impugned order.

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15. Considering the fact that the issue was kept alive by the department for all these years, this Court is of the view that the impugned Order in Original was passed in hurried manner without furnishing the details to the petitioner and without hearing the petitioner. Considering the above, the impugned order is set aside and the matter is remanded back to the respondent/Additional Commissioner herein to pass fresh orders on merits, after hearing the petitioner within a period of three months from the date of receipt of a copy of this Order. It is open to the petitioner to make all the legal submission available in law. No costs. Consequently, connected miscellaneous petition is closed.

07.09.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To
The Additional Commissioner
Office of the Principal Commissioner of CGST and Central Excise
Chennai North Commissionerate
No.26/1/Mahatma Gandhi Road,
Chennai – 600 003.

C.SARAVANAN,J.

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