IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25812 of 2023
and
W.M.P.Nos.25250 to 25252 of 2023

M/s.Al Mahmood Haj Services,
Represented by Proprietor,
37/A, Bangalore Road Hazrath Makan,
Vellore - 632 004. ... Petitioner

Vs.

1.The Additional Commissioner,
GST & Central Excise (Chennai Outer),
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai - 600 040.

2.The Joint Commissioner,
GST & Central Excise (Chennai Outer),
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai - 600 040.

3.The Assistant Commissioner,
GST & Central Excise,
Vellore Division,
Central Revenue Buildings, Officers Line,
Vellore - 632 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari , to call for the records of the impugned order in C.No.V/15/251/2018-Adj.Ch.Outer dated 28.02.2022 passed by the first respondent and consequential recovery letter dated 14.12.2022 in file No.GEXCOM/ADJN/MISC/207/2022-TECH-CGST-DIV-VLR issued by the third respondent and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.T.Ramesh Kutty
Senior Standing Counsel

ORDER

Mr.T.Ramesh Kutty, learned Senior Standing Counsel takes notice on behalf of the respondents.

2. This writ petition has been filed belatedly challenging the impugned order in C.No.V/15/251/2018-Adj.Ch.Outer dated 28.02.2022 passed by the first respondent and the consequential recovery notice dated 14.12.2022.

3. The case of the petitioner is that the petitioner is not liable to tax as per Rule 4 of the Place of Provision of Services Rules, 2012, if the place of provision of services actually provided is outside the country.

4. That apart, it is submitted that the petitioner is also entitled for abatement in terms of Notification No.25/2012-ST dated 20.06.2012 with effect from 01.07.2012.

5. The learned counsel for the petitioner submits that the Tribunal has also recently concluded that the services provided by similarly placed persons are eligible for exemption under Entry/Sl.No.5B to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 with effect from 01.07.2012 vide Final Order Nos.50986 to 50994 of 2023.

6. The learned Senior Standing Counsel for the respondents on the other hand would submit that this writ petition is liable to be dismissed in view of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

7. It is further submitted that the petitioner is not entitled to challenge the impugned order before this court belatedly in terms of the aforesaid decision.

8. At this stage, the learned counsel for the petitioner submits that the petitioner may be given liberty to file a statutory appeal before the Appellate Authority subject to the petitioner complying with the mandatory requirements of Section 35 of the Finance Act, 1994 as made applicable to recovery of tax under the provisions of the Finance Act, 1994.

9. Considering the above submission of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, this writ petition is disposed of at the time of admission without expressing any opinion on merits of the case by giving liberty to the petitioner to file a statutory appeal within a period of thirty days from the date of receipt of a copy of this order subject to the petitioner depositing mandatory pre-deposit as is required under the provisions of the Finance Act, 1994.

10. If such appeal is filed by the petitioner within such time, the Appellate Authority shall dispose the appeal on merits and in accordance with law in its turn as expeditiously as possible without a reference to the limitation under Section 85 of the Finance Act, 1994. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

04.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

pal/arb

To

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C.SARAVANAN, J.

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