HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14151-2021 (O&M)
Decided on: 09.08.2023

Genpact India Pvt. Ltd. ....Petitioner

V/s.

Principal Commissioner of
GST and CX, Gurugram and another ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Tarun Sethi, Sr. Advocate with
Mr. Rohit Sud, Advocate
for the petitioner.

Mr. Sharan Sethi, Senior Standing Counsel
(Indirect Taxes) for the respondents.

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Ritu Bahri, J.

1. **<u>CM-6621-CWP-2022</u>**

Application is allowed and rejoinder to reply filed by the respondents is taken on record.

2. **<u>CWP-14151-2021</u>**

The petitioner is seeking writ of certiorari for quashing and setting aside Demand cum Show cause Notice No. 47/GST/GGM/2020-21 dated 30.03.2021 (‘impugned notice”) (Annexure P-29) issued by Principal Commissioner of GST & CX, Gurugram-respondent No.1 under Sections 73 of the Finance Act, 1994 (“Act, 1994”) read with Section 174 of Central Goods & Services Tax Act, 2017 (“CGST Act”) requiring the petitioner to explain why the extended period of limitation in terms of proviso to Section 73(1) of the Finance Act, 1994 should not be invoked for recovery of refund of Rs.2,64,92,41,846/- granted to the petitioner. The impugned notice further requires the petitioner to explain why service tax of Rs.16,73,74,91,090/- should not be demanded and recovered from the petitioner.

3. On 30.07.2021, when notice of motion was issued, reference was made to ***CWP-6048-2021*** titled as ***Genpact India (P) Ltd. vs. Union of India and others***, (2022) 1 Centax 226 (P&H), decided on 11.11.2022 in which notice had already been issued and was pending for consideration. In that writ petition, the petitioner had challenged order dated 15.02.2021 whereby refund claim of un-utilized Input Tax Credit (ITC) used in making zero rated supplies of services under GST regime had been rejected. The main ground of the petitioner in that writ petition was that refunds had been granted to the petitioner consistently for all financial years starting from 2005-06 under the service tax regime and, therefore, on the principle of consistency, refunds under the GST regime should also be granted.

4. Learned counsel for the petitioner had argued that impugned notice has been issued as a counterblast after filing of ***CWP-6048-2021***, for recovery of Rs.26,34,61,625/-and the said amount should not be demanded from the petitioner.

5. Learned counsel for the petitioner has stated that the judgment dated 11.11.2022 passed in ***CWP-6048-2021*** fully covers the case of the petitioner as in that case, this Court, vide detailed judgment, held that the petitioner was not "intermediary" and, therefore, the refund claim of un-utilized Input Tax Credit (ITC) used in making zero rated supplies of services without payment of IGST was allowed.

6. Learned counsel for the petitioner has further stated that the respondents have implemented the judgment dated 11.11.2022 passed in

CWP-6048-2021 by detailed order and also decided to file SLP in the Hon'ble Supreme Court. Finally refund for an amount of Rs.21,98,06,002/- for the period April 2019 to June 2019 has been sanctioned by the Deputy Director Division East-II, Central Tax GST Gurugram. It is further stated therein that as per the letter dated 08.05.2023 issued by CBIC, the respondents have decided not to file SLP against the judgment dated 11.11.2022 passed in ***CWP-6048-2021***.

7. Hence, this Court is of the view that since the respondents have taken conscious decision not to file SLP against the judgment dated 11.11.2022 passed in ***CWP-6048-2021***, the ratio of ***Genpact India (P.) Ltd's case (supra)*** is directly applicable in this case.

8. Writ petition is allowed and notice dated 30.03.2021 (Annexure P-29) is set aside.

(RITU BAHRI)
JUDGE

09.08.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No