**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10230 OF 2024

M/s. Seva Automotive Pvt. Ltd.
Seva Automotives Nanded,
Hybad Road Near Bafna Motors,
Degloor Naka Road Nanded,
Itwara Nanded, Maharashtra,
Through its Director
Sanjeev Bafna, Age 60 years,
Occ. Business, r/o. As above. ... **Petitioner**

VERSUS

1) Union of India,
Through its Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001.

2) Principal Commissioner of CGST &
C. Ex., Nagpur-I Commissionerate
GST Bhavan, Telangkhdei Road,
Civil Lines, Nagpur-400001.

3) Commissioner of CGST & C.Ex.,
Aurangabad,
N-5 Town Centre, CIDCO,
Aurangabad- 431 003.

4) Superintendent, CGST & C.Ex.,
Nanded Urban Range,
Nanded-431605. ... **Respondents**

...

Advocate for Petitioner : Mr. Alok M. Sharma
Advocate for Respondent nos. 2 to 4 : Mr. D.S. Ladda

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**

DATE : 12.12.2024

PER COURT : (MANGESH S. PATIL, J.)

Heard both the sides.

2. The petitioner is challenging respondent no. 2-Principal Commissioner of CGST Nagpur's Order in Original No. 15/STNASHIK/ AKR/ PC/2024/NGP-I, dated 13.06.2024.

3. The learned advocate for the petitioner submits that the petitioner is a company engaged in the business of providing various services like rent-a-cab, man power recruitment agency, repairs, restoration, decoration or any other service related to motor vehicle, renting of immovable property, etc. He submits that it was served with a show cause notice dated 22.12.2020 in respect of service tax registration number AAACS7220HST001. He would submit that in fact the petitioner-company was having separate registration for single premises. All of which were surrendered on 05.09.2014. A single centralized registration was obtained. Even returns were filed in respect of aggregate turnover of more than Rs. 39 Crore. The respondents were informed about this vide communication dated 30.08.2017. By the show cause notice dated 22.12.2020, the petitioner was called upon to explain as to why a service tax of Rs. 2,88,39,550/- shall not be demanded and recovered under Section 73(1) of the Finance Act 1994 read with Section 6 of the Service Tax Rules 1994, in respect of the taxable services provided by it during the financial year 2014-2015 together with interest and penalty as contemplated under Section 75, 77 and 78 of the Finance Act, 1994.

4. Mr. Sharma would further submit that without there being any fraud or concealment, contrary to the provisions of Section 73, the action was beyond the period of 30 months provided therein. Therefore, even on this ground the notice itself is not sustainable.

5. The learned advocate Mr. Ladda for respondents by referring to the affidavit in reply would submit that there is no illegality, rather in the wake

of statutory remedy of appeal the petition itself is not maintainable. The petitioner is skipping that statutory remedy to obviate pre-deposit in terms of Section 86(7) read with Section 83 of the Finance Act, 1994, and the petition be dismissed.

6. Mr. Ladda would further submit that in spite of repeated requests and telephonic reminders the petitioner avoided pre-consultation and for want of such cooperation respondent no. 2 had no alternative but to pass the order. There are no extraordinary circumstances to entertain the petition under Article 226 of the Constitution of India, more so in light of the statutory remedy of appeal available in terms of Section 86 of the Finance Act 1994 before the Custom Excise and Service Tax Appellate Tribunal.

7. We have considered the rival submissions and perused the papers. In normal circumstances, indeed, this Court would be loath in exercising the power under Article 226 of the Constitution of India in the wake of availability of a statutory remedy. However, as we would point out herein after there apparently exist such extraordinary circumstances which makes the case before us exceptional.

8. As is being pointed out, the petitioner-company apparently had resorted to separate registration for single premises and after surrendering those on 05.09.2014 has obtained centralized service tax registration, which it received on 06.05.2014. Even there appears to be intimation given by it to the respondents on 07.05.2014.

9. True it is that the petitioner was remiss in promptly replying to the show cause notice and had replied belatedly on 07.06.2022, after about 17 months of receipt of the show cause notice. However, the fact remains that if it was a matter of surrender of the premises specific registrations and a centralized service tax registration, the impugned order should have considered this aspect meticulously when *prima faice*, the petitioner had filed a return under the centralized service tax registration.

10. The impugned order itself reproduces the response given by the petitioner to the show cause notice *inter alia* indicating about having filed ST-3 return under the centralized service tax registration for a total value of service provider of Rs. 39,12,65,336/- and service tax having been paid thereon which included the turnover of petitioner's Nanded branch in which case the dispute is.

11. As can be noticed from the impugned order though opportunity of hearing was extended to the petitioner it did not produce documentary evidence regarding the different premises/branches so as to enable respondent no. 2 to examine if the taxable amount mentioned in the show cause notice was included in the amount of taxable value of Rs. 39,12,65,336/-, for financial year 2014-2015, in respect of which the petitioner had filed the return and paid the tax under the centralized service tax registration. In absence of such particulars/documents that the decision was taken and the impugned order was passed confirming the show cause notice.

12. Since it is a matter of payment of service tax, in light of the aforementioned peculiar facts and circumstances, it would be appropriate if the petitioner is extended an opportunity to justify the stand being taken in its reply dated 07.06.2022 by producing relevant record before respondent no.2.

13. Incidentally, even this would enable respondent no. 2 to specifically examine and demonstrate as to if the extended period up to five years over and above 30 months prescribed under Section 73(1) can be legitimately invoked. The observations in paragraph no. 23 of the impugned order do not explicitly demonstrate as to how there was fraud or suppression of facts.

14. It is in light of the above state of affairs, in our considered view, it would be appropriate and in the interest of justice to quash and set aside the impugned order and relegate the matter to respondent no. 2 for taking a fresh decision by extending the petitioner an opportunity to produce

documents/accounts to substantiate its stand in the reply dated 07.06.2022.

15. The writ petition is allowed partly.

16. The impugned order is quashed and set aside. The petitioner shall appear before respondent no. 2 on 06.01.2025, shall produce relevant record/accounts and respondent no. 2 thereafter by extending opportunity of being heard to the petitioner, pass a fresh order on its own merits in light of the observations made herein above, as expeditiously as possible. All the issues are kept open.

(PRAFULLA S. KHUBALKAR J.) **(MANGESH S. PATIL, J.)**

mkd/-