IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

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

W.P.No.1588 of 2022
and WMP.No.1721 of 2022

M/s.Tamil Nadu Chemists & Druggists Association,
Represented by its Secretary K.K.Selvam ... Petitioner

vs.

1. The Union of India,
   Represented by its Secretary to Govt.,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2.The Additional Commissioner of GST & Central Excise,
Office of the Principal Commissioner of CGST & CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai 600 034. ... Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, for issuance of a writ of Ceriorari, calling for the records relating to the order in DIN No.20211159TK000000A306 in C.No.V/09/259/2012-Ch.N.Adj.(Order in Original Nos.33-39/2021-CH.N(ADC) dated 30.11.2021 passed by the 2nd respondent and to quash the same as without authority of law and contrary to the directions of this Court made in W.P.Nos.23694 of 2016 and 10574 of 2020 dated 30.11.2021; unsustainable in law.

For Petitioner : Mr.M.A.Mudimannan

For Respondents : Mr.Rajinish Pathiyil
Senior Standing Counsel.

ORDER

The petitioner is aggrieved by the impugned order in Original No.33-99-2021 CH-N (ADC) 30.11.2011 whereby the part of the demand proposed in Show Cause Notice No.371/2012 dated 20.12.2012 and various Statement of Demands issued to the petitioner has been confirmed vide impugned Order in Original No.33-99-2021 CH-N (ADC) 30.11.2011. Demand of service tax has been confirmed on the charges collected by the petitioner from its members. Operative portion to the impugned order in Original No.33-99-2021 CH-N (ADC) 30.11.2011 and the reasons for confirming the demand vide impugned order in Original No.33-99-2021 CH-N (ADC) 30.11.2011 reads as under:-

42. In view of the above, I hold that after 01-07-2012, the amount of subscription charges received from members by TNCDA, "being a body of persons who have come together for a common purpose would be excluded from tax net and it shall not be chargeable to service tax after 01-07-2012".

43. In respect of Services which were earlier classified under Business Auxiliary Service, viz, product information services, advertisement charges and income from meetings, the said services provided by the assessee are neither covered under Section 66D of the Finance Act, 1994 (i.e Negative List of Services) nor exempted by any Notification issued under Sec. 66C ibid and hence are taxable services chargeable to Service Tax as per Section 66B of the Finance Act, 1994. In this case, as discussed in paras supra, there is a service in the form of promotion or marketing of the pharma products of the members by way of publishing in the journal by the assessee, for which they receive consideration and hence even after 01-07-2012, Service tax is liable to be paid by TNCDA on the Product information charges & Income for Trade and Industry meeting received by them from the pharmaceutical manufacturers and members.

44. With regard to the advertisement income, I find that under clause (g) of Sec.66D containing negative list of services excluded from levy of service tax, refers to "Selling of space or time slots for advertisements other than advertisements broadcast by radio or television". This was substituted by the Finance (No.2) Act w.e.f. 01-10-2014 as "Selling of space for advertisements in print media". The phrase "print media" has been defined in clause (39a) of Sec. 65B, to mean "book" as defined in Sec. 1(1) OF Press and Registration of Books Act, 1867, but excludes

business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes & "newspaper" as defined in Sec. 1(1) of the Press and Registration of Books Act, 1867. As per Sec. 1(1) of the Press and Registration of Books Act, 1867, "Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed. The journal printed by the assessee would fall within the definition of book and hence within the definition of Print media and cannot be equated to business directories, yellow pages or trade catalogues. As there is no specific classification of advertisement service post 1.7.2012 and no condition that sale of space should be only by an advertisement agency or broadcasting agency, and also as the journal published by the assessee falls within the definition of Print media. sale of space which is specifically excluded from service tax, as falling under the negative list of services, the demand on advertisement income for the period post 1.7.2012 is liable to be dropped.

46. Also, as discussed in paras supra, TNCDA are not liable to pay Service tax on the subscription receipts from their members both prior to 01-07-2012 and after 01-07- 2012 in view of the decision of the Apex court discussed in paras supra.

47. In view of the above discussion, the qualification of the tax to be confirmed is tabulated below (It is left blank foir the purpose of this order)

48. On the aspect of suppression invoked in the impugned Notice No.371/2012 dated 20-10-2012, I find that TNCDA failed to divulge the above facts relating to their income from services and failed to

follow the procedures laid down under the law for the time being in force by not filing ST3 returns and not declaring the taxable value for services rendered and not paying appropriate service tax thereon. In this manner, they had indulged in suppression of the facts with willful intent to evade payment of service tax to the Central Government Account. It is also established that TNCDA had neither brought to the knowledge of the department regarding their activities nor sought for any clarification regarding taxability of any of their activity. But for the investigation by the officers of the department, the above facts would not have come to light and could have even gone unnoticed. This act of the assessee is synonymous to suppression of facts with intent to evade payment of service tax. Hence, I hold that that proviso to Section 73 (1) of the Finance Act, 1994 is invokable in this case in respect of Show Cause Notice No.371/2012 dated 20-10-2012 issued for the period from 2007-2008 to 2011-2012 for demand of service tax payable by them on the above taxable services along with interest at appropriate rate in terms of Section 75 of the Act.

49. On the same grounds, I am unable to take a lenient view with regard to imposition of penalty under Section 78 of the Finance Act, 1994 for the contraventions mentioned supra proposed in the Show Cause Notice No.371/2012 dated 20-10-2012. Thus, I hold that suppression of facts are clearly established in the instant case and TNCDA have rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

2. It appears that the petitioner is publishing information regarding the products and prints advertisements of the products manufactured by its members and others viz., various pharmaceutical companies journals. Provision of such service behalf of such manufacturers prima facie would fall under the definition of “Business Auxillary Service“ as defined under Section 65(19) of the Finance Act, 1944 r/w Section 65 (105)(zzb) of the Finance Act, 1994.

3. The petitioner claims that since service has been provided only to its members, no service tax period in terms of the decision of the Hon'ble Supreme Court in **State of West Bengal vs. Calcutta** (Civil Appeal No.4184 of 2009). However, it is noticed that the order deals with several other issues on which no service tax has been paid by the petitioner. Therefore, there is no merits in the impugned order passed by the Appellate Commissioner.

4. Under these circumstances, this Court is therefore inclined to give liberty to the petitioner to challenge the impugned order before the

Appellate Commissioner .

5. Under these circumstances, the petitioner shall file a statutory appeal before the Appellate Commissioner together pre-deposit as contemplated under Section 35F of the Central Excise Act, 1944, within a period of 30 days from the date of receipt of a copy of this order. The Appellate Commissioner shall decide the case without being influenced by the observations made by this Court.

6. This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

Index : Yes / No
Internet : Yes/ No
kkd

C.SARAVANAN, J.

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To

1. The Secretary to Govt.,
   Union of India,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi.

2.The Additional Commissioner of GST & Central Excise,
Office of the Principal Commissioner of CGST & CE,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

W.P.No.1588 of 2022