IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2375 of 2022
and
W.M.P.Nos.2534 and 29426 of 2022

M/s.Kerala Roadways Private Limited,
Represented by its Authorised Signatory
V.K.Zirajudeen ... Petitioner

Vs.

1.Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2.The Principal Commissioner of CGST and
Central Excise,
Office of the Principal Commissioner of CGST
and Central Excise,
Chennai North Commissionerate,
No.28/1, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in relation to the Impugned Order-in-Original 16-21/2021 vide DIN No.20211059TK0000555CB8 dated 26.10.2021 on the file of the second respondent and quash the same, with consequential direction to the second respondent to consider the issue afresh, giving the petitioner an opportunity of being heard personally and to pass a fresh order in consonance with law.

For Petitioner : Mr.S.Muthu Venkataraman

For Respondents : Mr.Umesh K Rao
Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Impugned Order-in-Original 16-21/2021 vide DIN No.20211059TK0000555CB8 dated 26.10.2021.

2. The Impugned Demand precedes the following Show Cause Notices and Statements of Demand issued under Section 73 of the Finance Act, 1994:

S.No.	SOD / SCN No.	Date	Period of Demand	Service Tax demanded (In Rs.)
1	SCN : 238/2012	14.06.2012	April 2008 to November 2011	26,39,153
2	SOD : 14/2013	11.02.2013	December 2011 to March 2012	9,897
3	SOD : 156/2014	18.06.2014	April 2012 to June 2012	55,79,276
4	SCN : 236/2014	16.09.2014	July 2012 to March 2013	1,55,70,769
5	SCN : 32/2016	13.04.2016	April 2013 to	4,21,84,332

S.No.	SOD / SCN No.	Date	Period of Demand	Service Tax demanded (In Rs.)
			March 2015	
6	SOD : 13/2018	05.04.2018	April 2015 to June 2017	4,01,67,336

3. The case of the petitioner is that the petitioner was providing Goods Transport Operator Service and Clearing and Forwarding Services and that in the course of audit of accounts of the Unit by the Internal Audit Group of Service Tax Commissionerate, the petitioner has incurred several expenses as a pure agent for its customers which was sought to be taxed in terms of the above mentioned Show Cause Notices / Statement of Demands which have been now culminated in the Impugned Order.

4. Learned counsel for the petitioner would submit that the issue is squarely covered by the decision of the Hon'ble Supreme Court on merits in **Union of India and another** Vs. **Intercontinental Consultants and Technocrats Private Limited**, (2018) 4 SCC 669 wherein the decision of the Division Bench of the Delhi High Court in **Intercontinental Consultants and Technocrats Private Limited** Vs. **Union of India**, 2012 SCC OnLine Del

5958 was affirmed by the Hon'ble Supreme Court.

5. That apart, the learned counsel for the petitioner would submit that the mandatory requirements of pre-consultation hearing / pre-notice consultation before the issuance of the Show Cause Notice contrary to the Board has been issued in SOD No.13/2018 dated 05.04.2018 and therefore on this count also the Impugned Order is unsustainable. In this connection, the learned counsel for the petitioner has placed reliance on the decision of this Court rendered in **M/s.Tube Investments of India Limited** Vs. **Union of India and others**, 2018 (16) G.S.T.L.376 (Mad.).

6. That apart, it is also submitted that part of the demand confirmed vide Impugned Order dated 26.10.2021 is also liable to be dropped as time barred.

7. In this connection, a reference was also made to the decision of the Hon'ble Supreme Court in **Nizam Sugar Factory** Vs. **Collector of Central Excise, A.P.**, (2006) 11 SCC 573 / 2006 SCC OnLine SC 455 and in **Hyderabad Polymers Private Limited** Vs. **Commissioner of Central Excise, Hyderabad**, (2006) 11 SCC 578 / 2004 SCC OnLine 345.

8. Learned Senior Standing Counsel for the respondents on the other hand would submit that the Impugned Order dated 26.10.2021 does not warrant any interference under Article 226 of the Constitution of India.

9. It is submitted that at best the petitioner can challenge the Assessment Order for any infraction in the procedure adopted while passing the Assessment Order. In this case, there are none of infraction.

10. That apart, it is submitted that this Court has not really concerned with the decision but the decision making process and therefore the Writ Petition is liable to be dismissed as it has no merits.

11. Learned Senior Standing Counsel for the respondents further submits that the petitioner has not substantiated by any document to claim benefit of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006. It is reproduced below:-

> **“5. Inclusion in or exclusion from value of certain expenditure or costs.-**

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

i. the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
ii. the recipient of service received and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
iii. the recipient of service is liable to make payment to the third party;
iv. the recipient of service authorises the service provider to make payment on his behalf;
v. the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
vi. the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
vii. the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
viii. the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation 1.- For the purposes of sub-rule (2), "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
(c) does not use such goods or services so procured; and
(d) receives only the actual amount incurred to procure such goods or services.

Explanation 2.- For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice."

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have also perused the replies filed by the petitioner to the above mentioned Show Cause Notices and the Statement of Demands.

13. The reply although is elaborate, it has not specifically dealt with the

facts in issue.

14. The law on the subject is clear which now stands clarified by the Hon'ble Supreme Court in **Union of India and another** Vs. **Intercontinental Consultants and Technocrats Private Limited**, (2018) 4 SCC 669.

15. Since the reply of the petitioner is in adequate and is bereft of factual details to explicate that the petitioner had indeed incurred expenses as pure agent on behalf of the customers / clients, the decision of the 2nd respondent in the Impugned Order-in-Original 16-21/2021 vide DIN No.20211059TK0000555CB8 dated 26.10.2021 will not warrant any interference.

16. However, the fact remains that the petitioner is providing Clearing and Forwarding Services and that of a Goods Transport Agent (GTA) / Goods Transport Operator (GTO).

17. During the course of audit of accounts of the Unit by the Internal

Audit Group of Service Tax Commissionerate, several expenses would have been incurred by the petitioner from various ancillary service providers as pure agent of the customers / clients for whom, the petitioner was providing such services viz., Goods Transport Operator Service and Clearing and Forwarding Services.

18. Therefore, to balance the interest of the petitioner and the respondents and considering the fact that the disputes pertains to the period starting from April 2008 ending with 2017 i.e., 30.06.2017, this Court is inclined to quash the Impugned Order and remits the case back to the respondents to pass a fresh order on merits. However, the petitioner shall deposit a sum of Rs.50,00,000/- to secure the interest of the revenue.

19. The respondents shall pass fresh order on merits within a period of six (6) months from the date of receipt of a copy of this order.

20. The Impugned Order dated 26.10.2021 which stands quashed shall be treated as an addendum / corrigendum to various Show Cause Notices / Statements of Demand issued to the petitioner.

21. The petitioner shall file a consolidated reply together with all the evidences to substantiate that indeed the petitioner had incurred the amounts as a pure agent as per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the Finance Act, 1994.

22. All the legal defences that are available to the petitioner are left open to be canvassed before the respondents in accordance with law.

23. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

19.12.2024

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

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To:

1.The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2.The Principal Commissioner of CGST and
Central Excise,
Office of the Principal Commissioner of CGST
and Central Excise,
Chennai North Commissionerate,
No.28/1, Mahatma Gandhi Road,
Chennai – 600 034.

C.SARAVANAN, J.

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