IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.4106 of 2021
and
W.M.P. No.4684 of 2021

West Asia Maritime Limited,
Rep. By its Authorised Signatory Mr.V.C.Ganesh,
Buhari Towers, 6th Floor,
No.4, Moores Road,
Chennai-600 006. ... Petitioner

Vs.

1.The Assistant Commissioner of GST and Central Excise,
Nungambakkam Division, Chennai North Commissionerate,
No.26/1, 5th Floor, Annexe Building, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Deputy Commissioner of GST and Central Excise,
Nungambakkam Division, Chennai North Commmissionerate,
No.26/1, 5th Floor, Annexe Building, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the Respondent in proceedings C.No.IV/16/374/2017-Tech in Order-in-Original No.23&24/2017-18 dated 26.03.2018 passed by the 1st Respondent and the consequential order C.No.IV/16/129/2015-C dated 25.01.2021 passed by the 2nd Respondent and notice of demand in C.No.IV/16/129/2015 dated 01.02.2021 U/Sec.87 of the Finance Act, 1994 issued by the 2nd

Respondent and quash these orders as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

The writ petition is filed challenging the impugned order dated 26.03.2018 insofar as the Respondents have invoked Section 73(1)(A) of the Finance Act, 1994, on the premise that the issue and the subject matter in respect of the earlier show cause notice which relates to the period 2010-11 to 2013-14 and the impugned proceedings which relates to the period 2014-15 and 2015-16 cannot be identical.

2. It is the submitted by the learned counsel for the petitioner that the impugned order suffers from error apparent on the face of the record inasmuch as it looks to agreements entered into for letting out their vessel bases on the quantum of goods to be transported to various parties such as M/s.Ultratech Cement Ltd., V.V.Minerals Pvt. Ltd., Sesa Sterlite limited, Chettinad Logistics (P) Ltd., etc., and that such services provided by the assessee were required to be classified under the category of "Transport of

goods by Coastal Shipping Service" till 30.06.2012 and as taxable service from 01.07.2012 as the case may be.

3. It is the submission of the learned counsel for the petitioner that during the relevant period, the petitioner did not have any agreement/ contract with the above parties and it is also the submission that the nature of the rights and obligation would vary from contract to contract and therefore any attempt to adjudicate would vitiate the proceedings.

4. To a pointed question as to why these errors cannot be a subject matter of rectification petition, the learned counsel for the petitioner would seek liberty of this Court for filing of rectification petition.

5. The learned counsel for the Respondents would submit that there is an effective alternate remedy by way of an appeal and this being an appealable order under Article 226 of the Constitution of India, the same should not be entertained.

6. As stated supra, if the submissions of the petitioner were to be taken as representing the correct state of affairs, then the impugned order may possibly suffer from error apparent. In that view of the matter, the petitioner is at liberty to approach the appropriate authority to file a rectification petition within the period of two weeks from the date of receipt of a copy of this order. If any such rectification petition is filed, the same shall be considered and orders passed after affording the petitioner a reasonable opportunity and decide the mater in accordance with law uninfluenced by any observation made. The writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition stands closed.

01.03.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:

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Nungambakkam Division,
Chennai North Commissionerate,
No.26/1, 5th Floor, Annexe Building, Mahatma Gandhi Road,
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2.The Deputy Commissioner of GST and Central Excise,
Nungambakkam Division, Chennai North Commmissionerate,
No.26/1, 5th Floor, Annexe Building, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

MOHAMMED SHAFFIQ, J.

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