IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.3959 of 2022
and
W.M.P.No.4103 of 2022

T.M.Hotels Private Limited,
Represented by its Director Mr.T.Murugesan,
No.48A, Mettu Street,
Kancheepuram – 631 501. ... Petitioner

Vs.

The Joint Commissioner of GST & Central Excise,
Office of the Commissioer of GST & Central Excise,
Chennai – Outer Commissionerate,
Newry Towers: No.2054-III Avenue: Anna Nagar,
Chennai – 600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records relating to File C.No.GEXCOM/ADJN/ST/ADC/1262/2021-ADJN in Order in Original No.60/2021(JC) dated 24.11.2021 passed by the Respondent and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

This is the second round of litigation before this Court. In this Writ Petition, the Petitioner has challenged the Impugned Order in Original No.60/2021 (JC) dated 24.11.2021. By the Impugned Order, the demand proposed in Show Cause Notice No.31 of 2013 dated 21.10.2013 has been confirmed.

2. Operative portion of the Impugned Order reads as under:-

ORDER

(a) I confirm the demand of service tax of Rs.39,14,849/- (Rupees Thirty Nine Lakhs Fourteen Thousand Eight Hundred and Forty Nine Only) on TMHPL being the service tax payable on Support services of Business or Commerce for the period from 2008-09 to 2012-13 (upto June 2012), under proviso to Section 73(1) of Finance Act, 1994 read with Section 73(2) ibid.

(b) I order recovery of interest at the appropriate rates payable on the tax amount mentioned in (a) above in terms of Section 75 of the Finance Act, 1994.

(c) I impose a penalty of Rs.39,14,849/- (Rupees Thirty Nine Lakhs Fourteen Thousand Eight Hundred and Forty Nine only) under Section 78 of the Finance Act, 1994. However, the amount of penalty payable shall stand reduced to 25% of the said amount, if the Service tax and interest determined is paid along with the reduced penalty within 30 days from the date of receipt of this

order in terms of proviso to Section 78(1) of the Finance Act, 1994.

(d) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) under Section 77(1) of the Finance Act, 1994.

(e) I do not impose penalty under Section 76 of the Finance Act, 1994,as per my findings at para 22 above."

3. Perusal of the documents filed before this Court indicates that earlier an *ex-parte* Order in Original No.11/2014(ST) dated 10.04.2014 came to be passed by the Respondent.

4. The Petitioner has challenged the same before this Court in W.P.No.14099 of 2014. Since the Order was passed without granting the benefit of effective hearing, this Court intervened and had set aside the Order in Original No.11/2014(ST) dated 10.04.2014 vide its Order dated 06.07.2021. Thereafter, the Impugned Order has been passed. The Order of this Court also directed the Respondent to hear the Petitioner and pass appropriate Orders on merits. The Writ Petition indicates that the Petitioner was also heard before the Impugned Order was passed.

5. The learned counsel for the Petitioner has relied on a few decisions of the Tribunal in support of the present Writ Petition. Even if there are few

decisions of the Tribunal, it is for the Petitioner to establish that the decisions were in its favour before the Appellate Commissioner under Section 84 and 85 of the Finance Act, 1994. As such the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked as the Petitioner has an alternate remedy which is more efficacious.

6. Therefore, this Writ Petition is liable to be dismissed and is accordingly dismissed. No cost. Consequently, connected miscellaneous petition is closed.

24.09.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

The Joint Commissioner of GST & Central Excise,

Office of the Commissioer of GST & Central Excise,
Chennai – Outer Commissionerate,
Newry Towers: No.2054-III Avenue: Anna Nagar,
Chennai – 600 040.

C.SARAVANAN, J.

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