IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.9604 and 9607 of 2022
and
W.M.P.Nos.9342 and 9346 of 2022

M/s.Urmilla Enterprises Pvt Ltd,
No.4A, "Urmilla House", 15, ARK colony,
Eldams Road, Alwarpet,
Chennai – 600 018.

Rep by its Director,
Mr.Niraj Sheth, having address at
No.1A, Sri Ranjini Apartments,
No.12, Subbaraya Avenue,
Abiramapuram,
Chennai – 600 018. ... Petitioner in both W.Ps.

Vs.

1.The Commissioner of Service Tax,
Plot No.2054, "Newry Towers", I Block,
12th Main Road, II Avenue,
Anna Nagar,
Chennai – 40.

2.The Principal Commissioner of Central Excise & GST
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondents in both W.Ps.

Prayer in W.P.No.9604 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in the Impugned Order in Original No.39 and 40/2022 CH.N.GST dated 17.03.2022, passed by the second respondent.

Prayer in W.P.No.9607 of 2022: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in the Impugned Order in Original No.37/2022 CH.N.GST dated 11.03.2022, passed by the second respondent.

For Petitioner : Mr.K.Senguttuvan
(in both W.Ps)

For Respondents : Mr.K.Mohana Murali
(in both W.Ps) Senior Standing Counsel

COMMON ORDER

In **W.P.No.9604 of 2022**, the petitioner has challenged the impugned Order-in-Original No.39 and 40/2022 CH.N.GST dated 17.03.2022. By the impugned order, the demand proposed in the Show Cause Notice No.274 of 2010 dated 20.04.2010 and Show Cause Notice

No.204 of 2012 dated 23.04.2012 have been confirmed. Details of the demand proposed in the Show Cause Notice are as under:

Show Cause Notice No.274/2010 dated 20.04.2010	**Show Cause Notice No.204/2012 dated 23.04.2012**
(i)Service Tax of **Rs.4,04,93,573/-** (Rupees Four Crores Four Lakhs Ninety Three Thousand Five Hundred and Seventy Three Only) payable for the period from **01.10.2004** to **31.03.2009** should be demanded from them under proviso to Section 73(1) of Finance Act, 1994; (ii)Cenvat Credit of **Rs.37,90,764/-** (Rupees Thirty Seven Lakhs Ninety Thousand Seven Hundred and Sixty Four Only) taken and utilized by them during the period from April 2008 to September 2008 should be disallowed and recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of Finance Act, 1994; (iii)Interest should be demanded under Section 75 of the Finance Act, 1994 on the service tax demanded above from the due date of payment till the date of actual payment; (iv)Interest should be demanded under Rule 14 of Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994 from the date of taken the wrong credit till the date of actual payment of the amount demanded;	(i)Service Tax of **Rs.31,17,007/-** Rupees Thirty One Lakhs Seventeen Thousand and Seven only) payable for the period from **01.04.2009 to 31.03.2011** should be demanded from them under proviso to Section 73(1) of Finance Act, 1994; (ii)Cenvat Credit of **Rs.44,11,249/-** (Rupees Forty Four Lakhs Eleven Thousand Two Hundred and Forty Nine only) taken and utilized by them during the period from October 2008 to March 2011 should be disallowed and recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of Finance Act, 1994; (iii)Interest should be demanded under Section 75 of the Finance Act, 1994 on the service tax demanded above from the due date of payment till the date of actual payment; (iv)Interest should be demanded under Rule 14 of Cenvat Credit Rules 2004 read with Section 75 of Finance Act, 1994 from the date of taken the wrong credit till the date of actual payment of the amount demanded;

Show Cause Notice No.274/2010 dated 20.04.2010	**Show Cause Notice No.204/2012 dated 23.04.2012**
(v)Penalty under Sections 76, 77 and 78 of the Finance Act, 1994 and Rule 15(4) of Cenvat Credit Rules, 2004 read with Section 78 of the Act should be imposed on them for the contraventions and allegations cited supra.	(v)Penalty under Sections 76, 77 and 78 of the Finance Act, 1994 and Rule 15(4) of Cenvat Credit Rules, 2004 read with Section 78 of the Act should be imposed on them for the contraventions and allegations cited supra."

2. In **W.P.No.9607 of 2022**, the petitioner has challenged the impugned 37/2022 CH.N.GST dated 11.03.2022. By the impugned order, the demand proposed in the Show Cause Notice No.10 of 2014 dated 17.10.2014 has been confirmed. Details of the demand proposed in the Show Cause Notice are as under:-

(a)Show Cause Notice No.10/2014 dated 17.10.2014:-

*(i)an amount of **Rs.60,20,798/-** (Rupees Sixty Lakh Twenty Thousand Seven Hundred and Ninety Eight only) being the service tax not paid on the reimbursements charges collected from their clients, as detailed in Annexure-I to this Notice, should not be demanded from them under proviso to Section 73(1) of Finance Act, 1994 read with Rule 5(1) of Service Tax (Determination of Value) Rules, 2006;*

(ii)an amount of Rs.6,06,783/- (Rupees Six Lakh

thousand Seven Hundred and Eighty Three only) being the service tax payable under Goods Transport Agency Service, as detailed in Annexure-II to this Notice, should not be demanded from them under proviso to Section 73(1) of Finance Act, 1994 read with Rule 2(1)(d)(v) of Service Tax Rules, 1994:

(iii)an amount of Rs.4,93,73,382/- being the service tax not paid under Supply of Tangible Goods Service, as detailed in Annexure-III to this Notice, should not be demanded from them under proviso to Section 73(1) of the Finance Act, 1994;

(iv)an amount of RS.84,55,076/- paid during 2011-12, 2012-2013 and 2013-2014 under the category of Supply of Tangible Goods Service, as mentioned in para 3(c)(iv) above, should not be appropriated towards the demand at (iii) above;

(v)an amount of Rs.5,51,442/- paid during the years 2011-12, 2012-13 and 2013-14 under Goods Transport Agency Service should not be appropriated towards the demand at (ii) above;

(vi)interest at appropriate rate should not be demanded from them under Section 75 of the Finance Act, 1994 towards the above demands; and

(vii)penalty under Sections 70,76,77and 78 of the Finance Act, 1994 should not be imposed on them for the contravention of the Act and Rules mentioned above.

3. Operative portion of the respective impugned orders read as under:-

*"<u>**(a)SCN No.274/2010 dated 20.04.2010**</u>:*

(i) I confirm the demand of service tax of Rs.4,04,93,573/- (Rupees Four Crores Four Lakhs Ninety Three Thousand Five Hundred and Seventy Three only) payable for the period from 01.10.2004 to 31.03.2009 under the proviso to Section 73(1) of Finance Act, 1994.

(ii) I disallow the Cenvat Credit of Rs.37,90,764/- (Rupees Thirty Seven Lakhs Ninety Thousand Seven Hundred and Sixty Four only) taken and utilized by them during the period from April 2008 to September 2008 and order recovery of the same under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 73(1) of Finance Act, 1994.

(iii) I demand the interest under Section 75 of the Finance Act, 1994 on the service tax demanded at Sl.No.(i) above from the due date of payment till the date of actual payment.

(iv) I demand the interest under Rule 14 of the Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994 on the cenvat credit disallowed at Sl.No.(ii) above, from the date of taking of the wrong credit till the date of actual payment of the amount demanded.

(v) I impose a penalty of Rs.4,04,93,573/- (Rupees Four Crores Four Lakhs Ninety Three Thousand Five Hundred and Seventy Three only) under Section 78 of the Finance Act, 1994.

(vi) I impose a penalty of Rs.37,90,764/- (Rupees Thirty Seven Lakhs Ninety Thousand Seven Hundred and Sixty Four only) Rule 15(4) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

(vii) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77 of the Finance Act, 1994.

(b) SCN No.204/2012 dated 23.04.2012:-

(i) I confirm the demand of service tax of Rs.31,17,007/- (Rupees Thirty One Lakhs Seventeen Thousand and Seven only) payable for the period from 01.04.2009 to 31.03.2011 under the proviso to Section 73(1) of Finance Act, 1994.

(ii) I disallow the Cenvat Credit of Rs.44,11,249/- taken and utilized by them during the period from October 2008 to March 2011 and order recovery of the same under Rule 14 of the Cenvat Credit Rules, 1994 read with proviso to Section 73(1) of Finance Act, 1994.

(iii) I demand the interest under Section 75 of the Finance Act, 1994 on the service tax demanded at Sl.No.(i) above from the due date of payment till the date of actual payment.

(iv) I demand the interest under Rule 14 of the Cenvat Credit Rules 2004 read with Section 75 of the Finance Act, 1994 on the cenvat credit disallowed at Sl.No.(ii) above, from the date of taking of the wrong credit till the date of actual payment of the amount demanded.

(v) I impose a penalty of Rs.31,17,007/- (Rupees Thirty One Lakhs Seventeen Thousand and Seven only) under Section 78 of the Finance Act, 1994.

(vi) I impose a penalty of Rs.44,11,249/- (Rupees Forty Four Lakhs Eleven Thousnad Two Hundred and Forty nine only) under Rule 15(4) of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act,

1994.

(vii) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77 of the Finance Act, 1994."

<u>SCN No.10 of 2014 dated 17.10.2024:-</u>

(i) I drop the amount of Rs.60,20,798/- being the service tax demanded on the reimbursement charges collected by the assessee from their clients.

(ii) I confirm the amount of Rs.6,06,783/- being the service tax payable under 'Goods Transport Agency service, under proviso to Section 73(1) of Finance Act, 1994 read with Rule 2(1)(d)(v) of Service Tax Rules, 1994;

(iii) I confirm the amount of Rs.4,93,73,382/- being the service tax not paid under 'Supply of Tangible Goods Service' under proviso to Section 73(1) of the Finance Act, 1994;

(iv) I appropriate an amount of Rs.84,55,076/- paid during 2011-12, 2012-13 and 2013-14 under the category of 'Supply of Tangible Goods Service' towards the demand at (iii) above.

(v) I appropriate an amount of Rs.5,51,442/- paid during the years 2011-12, 2012-13 and 2013-14 under 'Goods Transport Agency Service' towards the demand at (ii) above;

(vi) I confirm and demand interest at appropriate rates under Section 75 of the Finance Act, 1994 on the demands made under Sl.No.(ii) and (iii).

(vii) I impose a penalty of Rs.6,06,783/- under Section 78 of the Finance Act, 1994 in respect of non-payment of service tax on GTA.

(viii) I impose a penalty of Rs.4,93,73,382/- under Section 78 of the Finance Act, 1994 in respect of non-payment of service tax on 'Supply of Tangible goods' service.

(ix) I impose a penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994.

(x) I impose a penalty of Rs.40,000/- under Section 70 of the Finance Act, 1994.

4. The petitioner had rendered the Port Handling Charges of M/s.Bhoruka Steels and Services Limited. However, the petitioner failed to pay the service tax and therefore the above mentioned Show Cause Notices were issued for the period mentioned above.

5. The case of the petitioner appears to that the demand includes reimbursable expenses incurred and therefore the demand confirmed vide impugned order is contrary to the decision of the Hon'ble Supreme Court in the case of **Union of India and another** Vs. **Intercontinental Consultants and Technocrats Private Limited**, (2018) 4 SCC 669.

However, in the absence of any clear evidences on record like contract to prove that the value was inclusive of reimbursable expenses, the benefit of the decision of the Hon'ble Supreme Court, has not been extended to the petitioner. That apart, the issue pertains to Cargo Handling Service and Site Formation Service which were accounted under the head Hire/Rent receipts. The department has concluded for the charges collected under the Hire/Rent receipts are charges from the services provided by the assessee towards Cargo Handling Service as well as Site Formation Service. The second notice restricts the classification to Site Formation Service and therefore the petitioner was liable to pay tax. A part of the demand also relates to levy of service tax for Renting of immovable property service to M/s.Ashva Technologies Private Limited and M/s.INXS Technologies Private Limited which was not paid.

6. The learned Senior Standing Counsel for the respondents on the other hand would submit that the issue was answered by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants and Technocrats Private Limited** Vs. **Union of India**, 2012 SCC OnLine Del 5958 and therefore the Department had filed a **SLP.No.10918 of**

2013 before the Hon'ble Supreme Court against the decision of the Hon'ble Delhi High Court. Hence, the cases were transferred to the Call Book in terms of **CBEC Circular No.719/35/2003-CX** dated **28.05.2003** vide Commissioner's Note Order dated **28.10.2015**.

7. It is submitted by the learned counsel for the respondent that after the receipt of the decision of the Hon'ble Supreme Court, the Show Cause Notices were taken out from the Call Book for adjudication vide Principal Commissioner's Note Order dated 24.01.2019. It is further submitted by the learned counsel for the respondent that due to outbreak of Covid-19 pandemic, the case could not be taken for hearing immediately and therefore there has been some delay in adjudication of the Show Cause proceedings.

8. By way of rejoinder, the learned counsel for the petitioner submits that the issue is no longer *res integra* and would placed reliance on the decision of this Court in the case of ***M/s.Steel Authority of India Limited*** Vs. ***Office of the Commissioner of GST & CE, Office of the Assistant Commissioner of GST & CE, Office of the Superintendent of***

Central Excise, The Central Board of Indirect Taxes and Customs, Union of India reported in 2024 (388) E.L.T. 151 (Mad).

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

10. The Circular of the Board that are issued are for guidance of the officers. Although they are binding of the officers, they are neither binding on the Assessing Officer nor on the Courts. This is the law settled by the Hon'ble Supreme Court in the case of ***CCE*** Vs. ***Ratan Melting Wire Industries*** reported in ***(2002) 113 SCC 1***.

11. That apart, this is a case where the service provided by the petitioner was construed to be liable to service tax. However, the Hon'ble Delhi High Court had given a contra view. The Department was in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court gave its verdict in **Union of India and another** Vs.

Intercontinental Consultants and Technocrats Private Limited, (2018) 4 SCC 669. The Hon'ble Supreme Court upheld the views of the Delhi High Court by holding Rule 5 of Service Tax (Determination and Value) Rules, 2006 was ultra virus and that only with effect from 14.05.2015, by virtue of Section 67, expenses which wee incurred by the service provided while rendering of service and reimbursement would form part of value of service for paying tax. After the stay expired, the case was taken up for hearing and thereafter the order was passed. The decision of the Bombay High Court rendered in the case of ***Raymond Limited*** Vs. ***Union of India*** reported in 2019 (368) ELT 481 (Bom) appears to have been rendered in the context of a proceedings where the prejudice was caused to the party, as the evidence that were available 17 years back would have got obliterated.

12. However, in this case, the issue relates to taxability of service provided by the petitioner. There is both a question of law and disputed question of facts that were to be decided. In these cases, the Show Cause Notices were transferred to the Call Book as the decision of the Hon'ble Delhi High Court in **Intercontinental Consultants and Technocrats**

Private Limited Vs. **Union of India**, 2012 SCC OnLine Del 5958 was appealed before the Hon'ble Supreme Court.

13. As such no prejudice can be said to have been caused to the petitioner, merely because there was a delay in adjudication of the Show Cause Notice in view of the above stated reason. Therefore, I am unable to follow the views of the Hon'ble Bombay High Court in the case of ***Raymond Limited*** Vs. ***Union of India*** reported in 2019 (368) ELT 481 as it was rendered under totally different context.

14. Consequently, the decision of this Court rendered in the case of ***M/s.Steel Authority of India Limited*** Vs. ***Office of the Commissioner of GST & CE, Office of the Assistant Commissioner of GST & CE, Office of the Superintendent of Central Excise, The Central Board of Indirect Taxes and Customs, Union of India*** reported in 2024 (388) E.L.T. 151 (Mad) also cannot apply to the facts of the case, as the ratio emerging from it has no universal application.

15. Unless, prejudice is said to have been caused to the petitioner due to efflux of time in delay in adjudication of the Show Cause Notices, it cannot stated that the Show Cause proceedings will have lapse. There is also no provisions under the Act which permits lapsing of the Show Cause proceedings that have been initiated earlier.

16. Under these circumstances, these Writ Petitions are dismissed. However, I leave it open for the petitioner to challenge the impugned Order-in-Original Nos.39 and 40/2022 CH.N.GST dated 17.03.2022 and Order-in-Original No.37/2022 CH.N.GST dated 11.03.2022 before the Appellate Authority passed within a period of thirty days from the date of receipt of a copy of this order. If such appeal is filed within such time, same shall be taken on file and disposed on merits as expeditiously as possible. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

21.11.2024

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

1.The Commissioner of Service Tax,
Plot No.2054, “Newry Towers”, I Block,
12th Main Road, II Avenue,
Anna Nagar,
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2.The Principal Commissioner of Central Excise & GST
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