IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM

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

W.P.No.11369 of 2022
and
W.M.P.No.10931 of 2022

SKMC Business Ventures Private Limited,
F1/12, Firs Floor, Gee Gee Plaza,
No.1, Wheat Crofts Road,
Nungambakkam,
Chennai – 600 034. ... Petitioner

Vs.

1. The Additional Commissioner of CGST and Central Excise,
   Chennai North Commissionerate,
   No.26/1, Mahatma Gandhi Road,
   Chennai – 600 034.

2. The Additional Director General,
   Directorate General of GST Intelligence,
   Coimbatore Zonal Unit,
   No.155-1, Lakshmanan Street,
   Ukkadam,
   Coimbatore – 641 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the records of the First Respondent in the impugned Order-In-Original No.49/2022CH.N(ADC) dated 23.03.2022, quash the same as it is beyond the scope of Section 174(2) of the

CGST Act, 2017; without jurisdiction as it has been passed by the First Respondent on a Notice issued by the Second Respondent, who has no power to issue such Notice; and in violation of principles of natural justice or to issue any other appropriate Writ or Order.

For Petitioner	: Mrs.Radhika Chandrasekhar
For Respondents	: Mr.K.Mohana Murali Senior Panel Counsel

ORDER

The Petitioner is before this Court against the Impugned Order in Original No.49/2022/CH.N(ADC). By the Impugned Order, the demand proposed in SCN.No.62/2019 ST dated 24.10.2019 for the period between April 2014 to June 2017 has been confirmed.

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

ORDER

i. I confirm an amount of Rs.1,66,96,672/- (Rupees One Crore Sixty Six Lakhs Ninety Six Thousand Six Hundred Seventy Two Only) being the Service Tax payably by M/s.SKMC Business Ventures Pvt Ltd, Chennai on the amount received towards providing taxable services for the period April 2014 – June 2017 under Section 73(2) read with Proviso to Section 73(1) of the Finance Act, 1994.

ii. I demand interest at the appropriate rate on the service tax demanded in (i) above under the provisions of Section 75 of the Finance Act, 1994;
iii. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand) on them under Section 77(1)(a) of the Finance Act, 1994 for not obtaining Service Tax Registration;
iv. I impose a penalty of Rs.10,000/- (Rupees Ten Thousand) on them under Section 77(1)(C) of the Finance Act, 1994 for failure to furnsih the required details, data and documents within reasonable time;
v. I impose a penalty of Rs.1,66,96,672/- (Rupees One Crore Sixty Six Lakhs Ninety Six Thousand Six Hundred Seventy Two Only) on them under Section 78 of the Finance Act, 1994;
vi. I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand Only) on Shri.K.Sivakanth, Director, M/s.SKMC Business Ventures Private Limited under Section 78A of the Finance Act, 1994."

3. The challenge to the Impugned Order in this Writ Petition are on the strength of the decision of the Hon'ble Supreme Court in the following cases:-

i. ***Canon India Private Limited** vs. **Commissioner of Customs,** 2021 (376) E.L.T.3 (S.C.);*
ii. ***Andaman Timber Industries** vs. **Commissioner of Central Excise, Kolkata-II**, [2015] 62 taxmann.com 3 (SC); [2015] 314 ELT 641.*

4. The specific case of the Petitioner is that the Show Cause Notice which preceded the Impugned Order was issued by the Additional Director, Directorate General of GST Intelligence Coimbatore Zonal Unit and therefore, the entire exercise was contrary to law. This issue has been however answered against the Petitioner in the case of M/s.Redington (India) Ltd.

5. As far as the alleged violation of Principles of Natural Justice in failing to extending the benefit of cross-examination of one Mr.Mukesh Jain whose statement has been relied upon by the Officers of the Department is concerned the Department would have been obliged to extend the benefit of cross-examination of Mr.Mukesh Jain alone if any statement was made by him which would indirectly dilute the defense that was available to the Petitioner.

6. In this case, the statement of Mr.Mukesh Jain, Vice President of M/s.Fox Star Studious India Private Limited, Mumbai dated 05.11.2017

merely confirms that no service tax was charged on the invoices issued by the Petitioner and hence, charging or not charging service tax is their prerogative of the Petitioner and that he had nothing else to comment on it.

7. The case of the Petitioner appears to be that the amount that was paid was a reimbursable expense paid to M/s.Fox Star Studious India Private Limited, Mumbai and therefore, not liable to tax.

8. The cross-examination of Mr.Mukesh Jain, Vice President of M/s.Fox Star Studious India Private Limited, Mumbai therefore is unwarranted but only an excuse which is not available to the Petitioner.

9. As far as the issue arising out of the Show Cause Notice No.62/2019-ST dated 24.10.2019 issued by the Additional Director, Directorate General of GST Intelligence Coimbatore Zonal Unit is concerned issue is not only covered by the decision of this Court against the Petitioner but also in view of the Parliament intervention.

10. In view of the above, there is no merits in the present Writ Petition.

Therefore, the Writ Petition is liable to be dismissed. It is noticed that the Petitioner has an alternate remedy before the Commissioner of Central Excise (Appeals) under Section 35 of the Central Excise Act, 1944 and therefore, liberty is given to the Petitioner to challenge the said Order on merits within a period of thirty (30) days from the date of receipt of a copy of this Order subject to the Petitioner also depositing the mandatory principle deposit of Rs.7.5% as and when contemplated under Section 35F of the Central Excise Act, 1944.

11. The Writ Petition stands dismissed with the above liberty. No cost. Consequently, connected miscellaneous petition is closed.

24.09.2024

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

To

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C.SARAVANAN, J.

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