IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HON'BLE MR JUSTICE C. SARAVANAN

W.P.No.20437 of 2022
and
W.M.P.Nos.19604 and 26222 of 2022

Brokeman Logistics India Pvt. Ltd.,
Having registered office at
Jamal Chambers, Third Floor
No.49, (Old No.26), Mount Road
Saidapet, Chennai – 600 015
Tamil Nadu
Represented by its authorised signatory,
Mr.Ranga Mahesh Parath ...Petitioner

Vs.

The Commissioner of CGST and Central Excise
Chennai South Commissionerate
692. M.H.U Complex, Nandanam
Chennai – 600 035.
Tamil Nadu. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records and quash the impugned Order bearing OIO No.26-30/2022(c) dated 29.04.2022 passed by the respondent, to the extent it levies service tax on pure reimbursements along with interest and penalty, for the period between 1 April 2011 and 30

June 2017 and to remand the matter and direct the respondent to decide in a time bound manner.

For Petitioner : Mr.Manish Rastogi
for Mr.Thriyambak J.Kannan

For Respondent : Mr.K.S.Ramaswamy
Central Government Standing Counsel

ORDER

Heard Mr.Manish Rastogi for Mr.Thriyambak J.Kannan, learned counsel for the petitioner and Mr.K.S.Ramaswamy, learned Central Government Standing Counsel for the respondent.

2. In this writ petition, the petitioner has challenged the impugned **Order-in-Original No.26-30/2022(c)** dated **29.04.2022**. By the impugned order, demand on reimbursible expense incurred by the petitioner for the following periods have been confirmed:-

Sl.No.	Date	SCN/SOD No.	Period	Amount
1.	13.03.2013	30/2013	April 2011 to September 2011	Rs.12,85,156/-
2.	10.10.2013	290/2013	October 2011 to June 2012	Rs.22,38,418/-
3.	13.10.2014	302/2014	July 2012 to March 2013	Rs.47,21,778/-
4.	01.04.2015	24/2015	April 2013 to September 2014	Rs.87,23,838/-
5.	11.10.2017	05/2017(C)	October 2014 to June 2017	Rs.6,65,25,534/-

3.At the time of admission of this writ petition, this Court had taken note of the decision of the Hon'ble Supreme Court in **Union of India** Vs. **M/s.Intercontinental Consultants and Technocrats Pvt. Ltd.,** [2018 (10) GSTL 401 (SC)]. The Court had therefore, dismissed the writ petition, insofar as the period between **14.05.2015** to **June 2017**, with liberty to file a statutory appeal before the Appellate Body namely Customs Excise & Service Tax Appellate Tribunal.

4.The learned counsel for the petitioner makes a statement to that effect that the petitioner has now complied with the order dated **05.08.2022** and has now indeed filed an appeal for the period between **14.05.2015** to **June 2017**. The dispute in the present case is admittedly with reference to the inclusion of reimbursable expenses incurred by the petitioner by providing taxable services under the provisions of the **Finance Act, 1994**.

5. The Hon'ble Supreme Court while upholding the decisions of the Delhi High Court in **Intercontinental Consultants & Technocrats Pvt. Ltd.** Vs. **Union of India** [(2013) 29 S.T.R.9 (Del.)] has ultimately held as under:-

"31.In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited wherein it was observed as under:

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which 8 (2015) 1 SCC 1 impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

6. Both the learned counsel for the petitioner and the learned counsel for the respondent confirms that there are no other disputes in the impugned order. Since, the issue is now covered in favour of the petitioner for the period prior to **14.05.2015**, the demand confirmed vide impugned order to that extent is liable to be quashed and is accordingly quashed.

7. This writ petition stands allowed to that extent. No costs. Connected Miscellaneous Petitions are closed.

28.11.2024

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

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To:

The Commissioner of CGST and Central Excise
Chennai South Commissionerate
692. M.H.U Complex, Nandanam
Chennai – 600 035.
Tamil Nadu.

C. SARAVANAN, J.

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