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W.P.No.28060 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28060 of 2019
and
W.M.P.No.27677 of 2019

Harris Jayaraj,
No.63, Kamrajar Street,
Indira Nagar, Valasaravakkam,
Chennai – 600 087.

... Petitioner

Vs.

1. The Joint Director,
Directorate General of GST Intelligence (DGGI),
Chennai Zonal Unit,
C-3, C-Wing, II Floor,
Rajaji Bhavan, Beasant Nagar,
Chennai – 600 090.

2. The Joint Commissioner of CGST & Central Excise,
Chennai South Commissionerate,
5th Floor, 692, MHU Complex,
Nandanam, Anna Salai,
Chennai – 600 035.

3. The Assistant Commissioner of Central Tax and Central Excise,
Valasaravakkam Division,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road,
Anna Nagar,
Chennai – 600 040.

... Respondents



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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 the Impugned Show Cause Notice No.122/2018 dated 23.10.2018 issued by the 1st Respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.M.Santhanaraman
Senior Standing Counsel

ORDER

(Order of the Court was delivered by **R.SURESH KUMAR, J.**)

This Writ Petition has been filed challenging the Show Cause Notice dated 23.10.2018 issued by the 1st Respondent under Section 73 of the Finance Act, 1994.

2. The main contention of the Writ Petitioner to challenge the Show Cause Notice dated 23.10.2018 is that insofar as the leviability of the Service Tax is concerned under Section 65 B(44) of the Finance Act, 1994, the word 'Service' was explained that any activity carried out by a person for another for



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consideration and includes a declared service but shall not include: (a)(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner etc.

3. In that context, insofar as service rendered by the present Writ Petitioner that it is permanent in nature where the entire rights by way of transfer of goods have already been vested with the producer of the films for whom he worked as a musician only. Hence, it does not come under the purview of service within the meaning of Section 65 B(44) of the Finance Act, 1994.

4. The other ground which was raised on behalf of the Writ Petitioner even at the time of admission of the Writ Petition was that, in a similar circumstances a Show Cause Notice when was questioned was quashed by the Writ Court vide Order dated **16.04.2019** in the matter of **M/s.Vendhar Movies and Ors. vs. The Joint Director and Ors.**, reported in 2019 (6) TMI 110.

5. Insofar as the second ground by mainly relying upon the decision of the Writ Court cited supra is concerned that was appealed before the Hon'ble Division Bench of this Court where the Hon'ble Division Bench in a batch of cases similar to the fact of the **M/s.Vendhar Movies and Ors.**, by a common



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Order dated **04.01.2024** in the matter of the **Principal Commissioner of CGST**

and Central Excise, Chennai vs. M/s.Wunderbar Films Private Limited,

made in W.A.No.2638 of 2019 and etc. batch, has ultimately held that no challenge could be made against Show Cause Notice and in this context while remitting the matter back to the Assessing Authority for adjudication, the Hon'ble Division Bench has held as follows:-

“11. In view of the above, in the case of challenge to show cause notice(s), the Respondents in the writ appeals / writ petitioners are permitted to file their objections and in the case of challenge to orders of adjudication, the same are set aside and liberty is granted to the Respondents / writ petitioners to file fresh / additional objections, if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the adjudicating authority shall proceed with the adjudication and pass orders in an objective and independent manner influenced / unswayed / unfettered by any of the observations made by the learned Judge, within a period of four weeks from the date of receipt of the objections filed by the Respondents / writ petitioners as directed by this Court.”

6. When that being the position where a Coordinate Bench of this Court having considered exactly the similar points or grounds raised in the said batch of cases has also come to an ultimate conclusion that the Show Cause Notice



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shall not be challenged and it is for the assessee to approach the Adjudicating Authority/Assessing Authority and whatever the defense they want to make it they can take it by way of objections and if objections have already been filed by way of additional objections within a time framed based on which the Adjudicating Authority/Assessing Authority was directed to decide the same in an independent manner, uninfluenced, unswayed or unfettered by any way observation made in the Judgment dated 16.04.2019 in the matter of **M/s.Vendhar Movies and Ors. vs. The Joint Director and Ors., 2019 (6) TMI 110.**

7. Exactly the points that has been raised by the learned counsel appearing for the Petitioner who have challenged against the Show Cause Notice since has been answered by the said decision of the Coordinate Bench of this Court vide common Order dated **04.01.2024** in the matter of the **Principal Commissioner of CGST and Central Excise, Chennai vs. M/s.Wunderbar Films Private Limited**, in W.A.No.2638 of 2019 and etc. batch, by respectfully following the same, we are inclined to dismiss this Writ Petition also on same terms i.e., open to the Writ Petitioner to reply to the Impugned Show Cause Notice wherein it is for the Writ Petitioner to take whatever grounds/objections against the Show Cause Notice and accordingly the issue can be adjudicated



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and decided by the Adjudicating Authority/Assessing Authority/Revenue at an earliest point of time preferably within a period of four (4) weeks from the date of filing of the reply/objections by the Writ Petitioner.

8. With these observations and directions, Writ Petition stands disposed of. No cost. Consequently, connected Miscellaneous Petitions is closed.

[R.S.K., J.]

[C.S.N., J.]

28.08.2024

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

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