BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.11924 of 2024
and
W.M.P.(MD).Nos.10623 & 10624 of 2024

M/s.K.Balakrishnan, Balu Cables,
Represented by its Proprietor K.Balakrishnan,
No.187/3, Salem Main Road,
Vengamedu, Karur – 639 006. ... Petitioner

Vs.

O/o. the Assistant Commissioner of GST & Central Excise,
Karur Division,
No.15, First Floor, Gowripuram Extn,
Anna nagar, Karur – 639 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the Assessment year 2016-17 and 2017-18 in Order in Original No.21/2022-ST-ADJN dated 27.09.2022 and quash the same.

For petitioner : Mr.S.Rajasekar

For respondent : Mr.R.Nanda Kumar
Senior Standing Counsel

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ORDER

The petitioner is before this Court against the impugned order in Original No.21/2022-ST-ADJN dated 27.09.2022. The dispute pertains to the levy of Service Tax under the provisions of the Finance Act, 1994 as in force and still 13.06.2017 for the finance years 2016-17 and 2017-18 up to 30.06.2017.

2. The petitioner appears to be a cable service provider, who was issued with a show cause notice. The petitioner, however, failed to respond to the aforesaid show cause notice. Relevant portion is extracted as under:

> *"5. Whereas, it appeared that M/s.K.Balakrishnan, Balu Cables have carried out certain activities which are covered under the ambit of the definition of "SERVICE" defined under Section 65B(44) read with Section 65B(51) of the Finance Act, 1994 for a consideration accounted as income in their income tax return. It appeared that the assessee has not filed the ST returns or has not declared the entire turnover in their Service Tax (ST-3) returns filed for the period 2016-17 & 2017-18 (upto June 2017). Whereas it appeared that the assessee have not discharged the service tax on the taxable value amounting to*

Rs.23,10,156/- for the financial year 2016-17 & 2017-18 (upto June 2017).

6.Though the Range Officer had initiated communication via letter in F.No.GEXCOM/AE/INV/ST/1395/2021-CGST-DIV-KRR-COMMRTE-TRICHY dated 12.07.2021, to the assessee, seeking explanation for the discrepancies between gross value in IT returns and ST-3 returns for the period 2016-17 & 2017-18 (upto June 2017), the assessee have not produced documents that will reconcile the difference between Receipts from Services declared in Income Tax returns and Service Tax returns (ST-3).”

3. It is the case of the petitioner that the petitioner is not even required to obtain Service Tax registration in view of the exemption from obtaining the registration under notification No.8/08-ST dated 01.03.2008 amending Notification No.6/2005-ST dated 01.03.2005. It is submitted that the petitioner's activity although amounts to service, the petitioner's turn over is below the threshold under the above exemptions during the period in dispute and therefore, the petitioner has the case on merits. It is, therefore, submitted that the impugned order is liable to be quashed.

4. The learned counsel for the petitioner submits that the petitioner is willing deposit 25% of the disputed tax as a condition for entertaining the appeal before the Appellate Commissioner, although the petitioner is only required to

deposit 7.5% as per Section 35(f) of the Central Excise Act, 1944 made applicable the appeal under Section 86 of the Finance Act, 1994 before the Appellate Authority namely, the Commissioner of Customs and Central Excise (Appeals)-1, Trichy.

5. Per contra, the learned Senior Standing Counsel for the respondent would submit that this Writ Petition is liable to be dismissed on account of the latches. Apart from that the learned Senior Standing Counsel for the respondent would further submit that the issue is no longer maintainable as per the decisions of the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70*** and in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

6. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and the notification No.8/2008-ST, dated 01.03.2008 as amending notification No.6/2005

dated 01.03.2005 and also considering the fact that the petitioner is a small entity engaged in cable network connection, this Court is of the view that the petitioner may have the case on merits and therefore, a liberty can be given to the petitioner to file statutory appeal.

7. Recording the above submissions of the learned counsel for the petitioner, this Writ Petition is disposed of by permitting the petitioner to file statutory appeal before the Appellate Commissioner within 30 days from the date of receipt of a copy of this order together with the deposit of 25% of the disputed amount, as a condition for entertaining the appeal.

8. Needless to state, the above amount is without prejudice to the rights of the petitioner in the appeal. The petitioner shall be heard before the appeal is disposed of on merits and in accordance with law.

9. It is expected that the Appellate Commissioner endeavours to pass final orders on merits and in accordance with law within a period of 6 months from the date of receipt of a copy of this order.

This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

10.06.2024

Index : Yes / No
Internet : Yes / No
apd

C.SARAVANAN, J.

apd

W.P.(MD) No.11924 of 2024

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