IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4181 of 2024 (O&M)

Date of Decision : 23.02.2024

M/s Maersk Line India Private Limited … Petitioner

Versus

Union of India and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Tushar Jarwal, Advocate, for the petitioner.

Mr. Saurabh Goel, Senior Standing Counsel,
for respondent no.1- Union of India.

(Through VC)

SANJEEV PRAKASH SHARMA, J.

Heard learned counsel for the parties at length.

2. Learned counsel for the petitioner has strenuously argued that the action of the respondents in issuing order dated 08.12.2023 under Section 73 of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act') read with Section 20 of the Integrated Goods and Services Tax Act, 2017, is without jurisdiction and has been passed without application of mind.

3. Learned counsel further submits that the order has wrongfully imposed liability of Rs.4,01,63,724/- along with interest on the petitioner-company for the salary paid to its employees during the period from 01.07.2027 to 31.03.2021 as the payments made under the employer-employee relations is excluded from the scope of supply under Schedule III of the CGST Act. It is stated that the ratio laid down by Hon'ble the Supreme Court in ***C.C,C.E., & ST., Bangalore (Adjudication) vs. Northern Operating Systems Private Limited*** 2023 961) GSTL 129 (SC) would have no application to the present case and the

Karnataka High Court vide judgment passed in ***M/s Alstom Transport India Limited vs State of Karnataka***- WP No. 23915 of 2023, granted a stay on adjudication pursuant to the show cause notice issued.

4. In the present case, the final order has been passed on 08.12.2023 seeking recovery payment of Rs.4,01,63,724/- along with interest wherein applying the judgment passed by Hon'ble the Supreme Court in ***Northern Operating Systems Private Limited*** (supra) and the circular dated 13.12.2023 issued by the Central Board of Indirect Taxes and Customs which direct for examining each and every case on its own facts and the Revenue has reached to the conclusion that the amount is payable on import of service received from their foreign entity under Reverse Charge Mechanism for the period from July, 2017 to March, 2021. Thus, it is a question of fact which requires to be examined and no question of law is presently involved, therefore, the writ petition would not be maintainable, especially in view of the law laid down by Hon'ble the Supreme Court in case of ***State of Maharashtra and others vs Greatship (India) Limited*** 2022 (105) GSTR 300, wherein held as under:-

> *"8. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court*

refrains from exercising its jurisdiction under constitutional provisions.

9. In view of the above and in the facts and circumstances of the case, the High Court has seriously erred in entertaining the writ petition against the assessment order. The High Court ought to have relegated the writ petitioner – assessee to avail the statutory remedy of appeal and thereafter to avail other remedies provided under the statute.

10. Under the circumstances, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The writ petition filed before the High Court challenging the assessment order and consequential notice of demand of tax is hereby dismissed. The respondent – assessee is relegated to avail the statutory remedy of appeal and other remedies available under the MVAT Act and CST Act. It is directed that if such a remedy is availed within a period of four weeks from today, the appellate authority shall decide and dispose of the same on its own merits in accordance with law without raising any question of limitation, however, subject to fulfilling the other conditions, if any, under the statute. It is made clear that we have not expressed any opinion on the merits of the case in favour of either of the parties and it is for the appellate authority and/or appropriate authority to consider the appeal/proceedings on its/their own merits and without being influenced in any way by any of the observations made by the High Court which otherwise have been set aside by the present order. The present appeal is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs."

5. Similar view has been taken by Hon'ble the Supreme Court in ***Mohamed Ali vs V. Jaya and others*** 2022 (10) SCC 477 and ***The State of Madhya Pradesh and another vs M/s Commercial Engineers and Body Building Company Limited*** 2022 (14) Scale 920.

6. Keeping in view of the above and considering that there is a provision available under Section 107 of the CGST Act to prefer an appeal on the question of fact and the Appellate Authority would be in the best position to examine the facts of the case and reach to an independent conclusion, we refrain from entertaining this writ petition with liberty to file appeal. If such an appeal is filed, it is expected from the Appellate Authority to provide proper hearing to the petitioner and pass a speaking order expeditiously.

7. The writ petition is dismissed accordingly.

8. Pending applications, if any, stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

23.02.2024
Sangeeta/vs

(VIKAS SURI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No