$~83

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8476/2024 and CM APPL. 34914/2024 (Stay)

GULF HAJ AND UMRAH SERVICE .....Petitioner
Through: Mr. Gaura Gupta and Mr. Deepanshu Saini, Advs.

versus

ADDITIONAL COMMISSIONER ADJUDICATION .....Respondent
Through: Mr. Akshay Amritanshu, Sr. SC along with Mr. Samyak Jain, Ms. Drishti Saraf and Ms. Pragya Upadhyay, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **22.08.2024**

1. The petitioner has filed the present petition *inter-alia* impugning an order dated 16.09.2022 whereby the adjudicating authority had confirmed the demand of service tax amounting to ₹71,88,085/- and also imposed a penalty of equivalent amount that is ₹71,88,085/- under Section 78 of the Finance Act, 1994 for wilful suppression of the service tax liability.

2. It is the petitioner's case that it was registered for the levy of service tax for rendering 'Tour Operator Services' in two jurisdictions: Service Tax Commissionerate Delhi – I (vide STC No.AASPUI229MSD001) and Service Tax Commissoinerate, Lucknow (vide STC No. AASPU1229MSD002).

3. The petitioner states that its turnover pertaining to the Lucknow Commissionerate, is held to be exempt from the service tax in terms of an order dated 21.03.2016. The petitioner claims that it is carrying on services

of arranging tours for Haj and Umrah and the same is being considered as exempted services by the Lucknow Commissionerate. However, the respondent (Service Tax Commissionerate Delhi – I) appears to have taken a different view and have now raised a demand for service tax pertaining to such services rendered by the petitioner during the relevant period.

4. In terms of the impugned order dated 16.09.2022, the petitioner's liability has been assessed on a best judgment basis. It is the petitioner's case that the same also includes the turnover pertaining to the Lucknow Commissionerate, which was the subject matter of adjudication by the Lucknow Commissionerate.

5. According to the petitioner, the services of arranging tours for Haj and Umrah are exempted services, however, notwithstanding the contrary view, the Delhi Commissionerate could not have passed an order including the turnover covered under the Lucknow Commissionerate.

6. The present petition was listed on 30.07.2024. The learned counsel for the respondent had accepted notice and sought time to obtain instructions. She has since obtained instructions and submits that the demand raised includes the petitioner's turnover which is subject matter of assessment by the Lucknow Commissionerate. She fairly states that the matter be remanded to the adjudicating authority for consideration afresh.

7. In view of the above, the impugned order is set aside and the matter is remanded to the adjudicating authority for consideration afresh.

8. It is clarified that all rights and contentions of the parties are reserved and nothing stated in this order should be constructed as an expression of opinion of this Court on the merits of the controversy whether the petitioner is liable to pay service tax on its turnover or any penalty under Section 78 of

the Finance Act, 1994.

9. The present petition stands disposed of.

10. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 22, 2024/cl