WPA 6157 of 2025

Sheikh Jalal Ali
versus
Chief Commissioner, CGST & CX, Kolkata Zone & Ors.

Mr. Sourav Bagaria
Mr. Indranil Banerjee
Mr. Subrata Mukherjee ...For the petitioner

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja ...For the CGST authorities

Mr. Sudipta Panda
Ms. Ananya Neogi ...For the State

Mr. Bishwambhar Jha
Mr. S. Sengupta
Ms. M. Mishra
Mr. H.K.Jha ...For the respondent no. 6

Mr. Avra Mazumder
Ms. Alisha Das ...For the respondent nos. 7 to 9

With

WPA 6151 of 2025

Utpal Kumar Guha

Versus

Chief Commissioner, CGST & CX, Kolkata Zone & Ors.

Mr. Sourav Bagaria
Mr. Indranil Banerjee
Mr. Subrata Mukherjee ...For the petitioner

Mr. Vipul Kundalia
Mr. Tapan Bhanja ...For the CGST authorities

Mr. Bishwambhar Jha
Ms. M. Mishra
Mr. H.K.Jha ...For the respondent no. 6

Mr. Soumyajit Mishra ...For the respondent no. 9

With

WPA 6292 of 2025

M/s Tenacity Security & Anr.

Versus

Chief Commissioner, CGST & CX, Kolkata Zone & Ors.

Mr. Indrajit Banerjee
Mr. Soumyajit Mishra ...For the petitioner

Mr. Vipul Kundalia
Mr. Tapan Bhanja ...For the CGST authorities

Mr. Bishwambhar Jha
Ms. M. Mishra
Mr. H.K.Jha ...For the respondent no. 5

Mr. Indranil Banerjee ...For the respondent no. 11

Mr. Sourav Bagaria ...for the respondent No. 10

1. Questioning a circular issued by the Kolkata Municipal Corporation whereby it was claimed that the Kolkata Municipal Corporation is exempted from Service Tax in respect of the service rendered by the petitioner, and

also questioning the authority of the Service Tax authorities to impose service tax, a writ petition had been filed before this Court which was registered as WPA 92 of 2017. By order dated 25th April 2017 a Coordinate Bench of this Court while deciding the above writ petition was of the view that Service Tax authorities having issued summons, on account of payment of service tax on the petitioner and the petitioner having participated in such proceedings, it will be appropriate for the Service Tax authorities to conclude the proceeding against the petitioner in accordance with law. Insofar as the KMC is concerned, having regard to the circular issued by the KMC authorities, though it was provided that KMC need not pay service tax, however, the authorities under the Finance Act, 1994 were free to adjudicate upon the liability of the petitioner to pay service tax in respect of the contract between the petitioner and the KMC in accordance with law. Two other writ petitions filed by similarly circumstanced persons were disposed of by a Coordinate Bench of this Court on identical terms though by two separate orders dated 25th April 2017 which were passed in WPA 103 of 2017 and WPA 45 of 2017.

2. Being aggrieved, the petitioners in the respective writ petitions filed separate appeals. The appellate Court taking note of the stand of the KMC, as evident from the circular being 83/2013-14 issued on 4th January 2014 that services rendered by them and services given to them in rendering public services is exempted from payment of service tax in view of Mega exemption notification no. 25/2012-ST dated 20th June 2012 issued by the Government of India, since according to KMC the functioning of duties of KMC is

concomitant to public interest as enshrined in the Constitution of India, was of the view that the correctness of the interpretation made by the KMC in their circular dated 4th January 2014 was required to be tested out at the first instance as the adjudicating authority was yet to decide the same by putting KMC on notice in the above proceeding. Having regard thereof, the above appeals were disposed by a common judgment and order dated 11th July, 2022 by directing the concerned Service Tax Commissionerate to issue fresh notice to the appellants as well as the KMC which shall be treated as a continuation of earlier show cause notice and the concerned authority was directed to adjudicate the issue by passing a reasoned order on merit in accordance with law after hearing the parties. The Hon'ble Division Bench of this Court was also of the view that no coercive action shall be initiated against the petitioners till the adjudication is completed.

3. Records would reveal that pursuant to the aforesaid order, the concerned authority by issuing appropriate show cause notice on the KMC had adjudicated upon the respective show-causes by passing three separate orders in original dated 5th December 2022, 7th December 2022 and 8th December 2022. Copies of the operative portion of the aforesaid orders as placed before this Court by the petitioners are retained with the record.

4. Challenging the determination so made by the adjudicating authority in the respective cases, three separate writ petitions being WPA 6881 of 2023, WPA 6882 of 2023 and WPA 6887 of 2023 were filed before this Court, which came to be dismissed on the ground of availability of

alternative remedy by a common judgment dated 1st May 2023. Being aggrieved, each of the petitioners had filed separate appeals before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench by order dated 1st September 2023 while noting that the observations made by the adjudicating authority in the respective orders is not in proper appreciation of what is meant to be an effective opportunity to be given to a noticee by the adjudicating authority and while entertaining the appeal, stayed the operation of the order in original dated 5th December 2022. Similarly, identical orders were also passed in respect of other two mandamus appeals.

5. All the three appeals were however, disposed of by a common judgment and order dated 30th April 2024 by setting aside the respective original orders dated 5th December 2022, 7th December 2022 and 8th December 2022, thereby, remanding the matter back to the respective adjudicating authority for a fresh decision with a further direction upon the adjudicating authority to furnish copies of the replies/written submissions, documents and details submitted by the KMC in response to the show cause dated 5th August 2022 within the time specified therein. The adjudicating authority was directed to adjudicate the matter and pass fresh orders on merit in accordance with law being uninfluenced by any of the observations made in the aforesaid order. Since then, the adjudicating authority in one of the matters had taken up hearing whereupon the petitioner in WPA 6157 of 2025, by a communication in writing dated 19th December 2024 intimated the respondents that the petitioner was of the view that the

present case warrant adjudication by a common adjudicating authority in keeping with the principles of fairness, equality and propriety.

6. Having regard thereto, an adjournment was sought for. Subsequently, the petitioner in WPA 6157 of 2025 along with the other two petitioners in WPA 6151 of 2025 and WPA 6292 of 2025 had applied before the Chief Commissioner for appointing a common adjudicator. The applications filed by the petitioners came to be rejected by orders all dated 5th February 2025. Challenging the above, the above writ petitions have been filed.

7. Mr. Bagaria, learned advocate appearing in support of two writ petitions submit that although the matters have been decided by the Hon'ble Court by passing a common order, according to him, since the issues involved are common, a common adjudicator ought to have been appointed. By placing reliance on a judgment delivered by the Hon'ble Division Bench of this Court passed on 11th July 2022, he submits that the Hon'ble Division Bench in the first round of litigation had directed the 'concerned' adjudicating authority to decide, while in the second round of litigation the Hon'ble Division Bench by its judgment dated 30th April 2024 had directed 'the' adjudicating authority to decide the matter. Having regard thereto, the respondents could not have been appointed separate adjudicating authorities to decide on the same issue. He submits that the Chief Commissioner has the power and competence in matters to issue orders to appoint a common adjudicating authority within his zone in matters which raise common issues and in this context, reliance has been

placed on the circular dated 7th December 2015 and the circular dated 10th March 2017 issued by the Government of India, Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi. He submits that in view of the above, the orders of rejection all dated 5th February 2025, whereby the petitioners' request for clubbing all the matters and to appoint a common adjudicator had been turned down, cannot be sustained.

8. Mr. Banerjee, learned advocate appearing for the petitioner in WPA 6292 of 2025 adapts the submission of Mr. Bagaria.

9. The learned advocates appearing for the CGST authorities in the respective matters submit that admittedly in these cases at no point of time, a common adjudicator had been appointed. All along the respective show-cause notices had been decided by separate adjudicators, which are based on separate cause of action. At no point of time, the petitioners had raised the issue of appointment of a common adjudicator. Though, the matter had travelled to the Hon'ble Division Bench twice over, the petitioners had never insisted for appointment of any common adjudicator. In any event, the petitioners had all along accepted the determination by the adjudicators already appointed. He submits that the aforesaid writ petitions have been filed only to delay the hearing if possible.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it would transpire that initially the petitioners had individually applied before this Court challenging, *inter alia,* the circular issued by the KMC

claiming that the KMC is exempted from paying service tax in respect of the service rendered by the petitioners, and the authority of the Service Tax Authority to impose Service Tax. Although, by separate orders all dated 25th April 2017, such petitions were dismissed on the ground noted above, on writ appeals being preferred, the Hon'ble Division Bench of this Court was of the view that having regard to the claim made by the KMC that services rendered by them and services given to them in rendering public service is exempted from payment of service tax, in the light of the Mega exemption notification no. 25/2012-ST dated 20th June 2012 issued by the Government of India since according to KMC the functioning of duties of KMC is concomitant to public interest, such issue was required to be decided upon notice to the KMC at the first instance. Having regard thereto, the Hon'ble Appeal Court by a common judgment had disposed of the above appeals by directing the Service Tax Commissionerate to issue fresh notices on the appellants as also the KMC which was to be treated as a continuation of earlier show cause notices and the concerned authority was directed to adjudicate upon the same.

11. Pursuant to the aforesaid, the respective adjudicating authorities had decided on the show cause and had passed their respective adjudication orders dated 5th December 2022, 7th December 2022 and 8th December 2022. Being aggrieved three separate writ petitions were filed which all came to be dismissed by judgment and order dated 1st May 2023 on the ground of alternative remedy. On three separate appeals being filed from the aforesaid order,

the Hon'ble Division bench was, however, of the view that the circulars relied on by the adjudicating authority issued by the KMC were not put to notice of the assessee. This constituted violation of principle of natural justice.

12. Having regard thereto, by a common judgment and order dated 30th April, 2024 the Hon'ble Division Bench while setting aside the aforesaid orders had remanded the matter back to the adjudicating authority for a fresh decision on merit with a further direction upon the adjudicating authority to furnish copies of replies/written submissions/documents and details submitted by the KMC in respect of the show cause notices to the appellants for the appellants to respond to the same and with a direction upon the adjudicating authority to decide the same in accordance with law.

13. Pursuance to the above the adjudicating authority had proceeded to hear out the same afresh. It is at this stage that the petitioners have come up with a plea that since common questions are involved, the matter should be decided by a common adjudicator. It may be noted here that the respective petitioners have no connection or nexus with each other. The cause of action of the individual petitioners against the KMC are individual and distinct. Though there is a common question of law involved, facts are, however, separate. At no point of time the petitioners questioned the jurisdiction of the respective adjudicating authority to decide the case. In fact, three separate adjudicating orders were passed by the respective adjudicating authorities dated 5th December, 2022, 7th December, 2022 and 8th December, 2022. When the writ

petitions were filed in the first round in the year 2022, this question was not raised either before the writ Court or before the appeal Court. The issue as to whether the matter should be remanded back to a common adjudicating authority was also not raised. At the subsequent stage on the second round before the appeal Court this issue was also not raised.

14. Although, the ground on which the commissioner had rejected the application cannot be said to be proper, however, having regard to the peculiar facts of the case, I am not inclined to interfere with the same as the prayer for a common adjudicator appears to be an afterthought and is likely to further delay the proceedings.

15. With the above observations and directions, the writ petitions being WPA 6157 of 2025, WPA 6151 of 2025 and WPA 6292 of 2025 are disposed of.

16. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.)*