IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.11.2024
Pronounced on	23.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11466 and 11470 of 2021
and
W.M.P.Nos.12200 and 12204 of 2021

M/s.Divo TV Private Limited,
Represented by its Director Mr.Shahir Muneer ... Petitioner in both W.Ps

Vs.

1.The Customs, Central Excise and Service Tax Settlement Commission,
Represented by its Vice Chairman,
Additional Bench, II Floor,
Narmada Block, Custom House,
Rajaji Salai, Chennai – 600 001.

2.The Commissioner of GST and Central Excise,
Chennai North Commissionerate,
GST Bhavan, No.26/1, Mahatma Gandhi Road,
Chennai – 600 034.

3.The Joint Director,
Office of the Directorate General of Goods and Service Tax Intelligence,
Chennai Zonal Unit,
No.16, Greams Road,
BSNL Building,
Tower II, V Floor,
Chennai – 600 006. ... Respondents in both W.Ps

Prayer in W.P.No.11466 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the Impugned Order No.03/2021-ST dated 22.03.2021 passed by the 1st respondent and quash the same.

Prayer in W.P.No.11470 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the Impugned Notice bearing F.No.INV/DGCEI/CHZU/41/ST/2017-PF-1/4559 dated 24.06.2020 issued by the 3rd respondent and quash the same.

For Petitioner (In both W.Ps)	:	Mr.M.Sricharan Rangarajan Senior Counsel for Mr.M.Gowthamkumar
For Respondents (In both W.Ps)	:	Mr.S.R.Sundar Standing Counsel

COMMON ORDER

By this Common Order, both the Writ Petitions are being disposed of.

2. In W.P.No.11466 of 2021, the Petitioner has challenged the Impugned Order No.03/2021-ST dated 22.03.2021 passed by the 1st Respondent, the Customs, Central Excise and Service Tax Settlement Commission, presided by its Vice-Chairman.

3. By the Impugned Order No.03/2021-ST dated 22.03.2021, the 1st

Respondent, the Customs, Central Excise and Service Tax Settlement Commission has rejected the application filed by the Petitioner for settling the dispute under Section 32F(5) of the Central Excise Act, 1944 as made applicable to settling the dispute under the provisions of the Finance Act, 1994 for the period between 2014-2015 and 2017-2018 (upto June 2017).

4. In W.P.No.11470 of 2021, the Petitioner has challenged the Impugned Show Cause Notice F.No.INV/DGCEI/CHZU/41/ST/2017-PF-1/4559 dated 24.06.2020 issued by the 3rd Respondent.

5. By the Impugned Notice dated 24.06.2020 issued by the 3rd Respondent, the 3rd Respondent has called upon the Petitioner to show cause as to why

i. An amount of Rs.3,11,73,485/- as discussed in Para 9.1, should not be construed as the consideration received for the taxable services including online video network, music distributor and social media management services provided by them.

ii. Amount of Rs.46,41,629/- (Rupees Forty Six Lakhs Forty One Thousand Six Hundred and Twenty Nine) being the service tax liability on the consideration of Rs.3,11,73,485/- should not be demanded from them under proviso to Section 73(1) of the Finance Act, 1994.

iii. The consideration of Rs.9,24,31,574/-, as discussed in Para 9.2 supra, received by DTPL and which is claimed as income from export of service should not be rejected since DTPL have failed to fulfil all the conditions stipulated under Rule 6A of the Service Tax Rules, 1994.

iv. An amount of Rs.1,33,03,978/- (Rupees One Crore Thirty Three Lakhs Three Thousand Nine Hundred and Seventy Eight) being the service tax liability (inclusive of cesses payable) on the amount mentioned in sl.no.(iii) supra, should not be demanded from them under proviso to Section 73(1) of the Finance Act, 1994.

v. An amount of Rs.21,47,285/- (Twenty One Lakhs Forty Seven Thousand Two Hundred and Eighty Five) paid as service tax liability by DTPL as discussed in Paragraph 10 supra should not be appropriated against the demand mentioned at sl.no.(ii) above.

vi. Interest on the service tax demanded at sl.no.(ii) and (iv) above should not be demanded under Section 75 of the Finance Act, 1994.

vii. Late fee for delayed filing of ST.3 return should not be demanded from them.

viii. Penalty should not be imposed under Section 76 of the Finance Act, 1994 for the reasons stated above.

ix. Penalty should not be imposed under Section 77 and 78 of the Finance Act, 1994 for the reasons stated above.

6. The Petitioner appears to be a content provider engaged in the business of providing Online Video Network, Music Distributorship, Advertising Agent Services, Social Media Management and Event Management Services to its clients.

7. It appears that the business of the Petitioner was earlier started by its

Director Mr.Shahir Muneer as a Proprietor. Mr.Shahir Muneer had earlier signed an Agreement called Content Hosting Services Agreement dated 22.04.2013 with Google Ireland Limited. The Content Hosting Services Agreement between Mr.Shahir Muneer and Google Ireland Limited, was on non-exclusive basis but with limited right to Google Ireland and its "affiliates" to host the contents generated by Mr.Shahir Muneer, to cache, route, transmit, reproduce, publish, store, distribute, create algorithms based on and otherwise use the content provided by the concern.

8. The case of the Petitioner is that even before the Content Hosting Services Agreement with Google Ireland Limited was implemented, the Petitioner Company was incorporated by its Managing Director namely Mr.Shahir Muneer on 24.01.2014 with Mr.Vishwanathan Ramaswamy as the other Director/Shareholder. Therefore, all the contents that were provided to domestic media channels and its affiliates were invoiced in the name of the Petitioner Company after the incorporation of the Petitioner Company on 24.01.2014.

9. The further case of the Petitioner is that as far as the service provided to domestic media channels were concerned, the Petitioner had collected tax and had paid the same after a search was conducted.

10. It is further case of the Petitioner that bulk of the income of the Petitioner came from the services provided to Google Ireland Limited under the aforesaid Content Hosting Services Agreement signed between the Director of the Petitioner Company namely Mr.Shahir Muneer as a Proprietor of Proprietary concern since the Agreement was signed prior to incorporation of the Petitioner Company namely M/s.Divo TV Private Limited. However, all the payments received are reflected in the books of account of the Petitioner Company and that the service provided was exempted in terms of Rule 6A of the Service Tax Rules, 1994 as amended with effect from 01.07.2012 vide Notification No.36/2012-Service Tax (ST) dated 20.06.2012.

11. The case of the Petitioner is that the Department however proceeded to issue Show Cause Notice bearing F.No.INV/DGCEI/CHZU/41/ST/2017-PF-1/4559 dated 24.06.2020 which is impugned in W.P.No.11470 of 2021. Therefore, the Petitioner opted to settle the dispute under Chapter-V of the Central Excise Act, 1944, as made applicable for settling tax dispute under

Section 83 of the Finance Act, 1994.

12. It is the further case of the Petitioner that the Petitioner has paid the entire tax liability together with interest for the services provided to the recipients in India.

13. Learned Senior Counsel for the Petitioner would submit that applications filed under Chapter-V of the Central Excise Act, 1944, as made applicable to settle the dispute under Section 83 of the Finance Act, 1994, have been wrongly rejected by the 1st Respondent only on the 2 grounds that there was no Agreement between the Petitioner Company and Google Ireland and that the Petitioner had failed to raise invoices for the services provided to Google Ireland Limited.

14. Learned Senior Counsel for the Petitioner would submit that the Petitioner was not required to raise invoices under the Agreement namely Content Hosting Services Agreement dated 22.04.2013 with Google Ireland Limited although it was signed by its Director Mr.Shahir Muneer as a Proprietor whose business was taken over by the Petitioner Company.

15. It is submitted that the business of the Proprietary concerned, which the Proprietor or Director of the Petitioner Company was taken over by the Petitioner Company after it was incorporated and that the decision was ratified by the Board Resolution dated 28.04.2014.

16. Learned Senior Counsel for the Petitioner would also submit that part of the demand is also time barred insofar as the Assessment Year 2014-2015 is concerned as the Impugned Show Cause Notice has been issued only on 24.06.2020.

17. That apart, the learned Senior Counsel for the Petitioner would submit that the disputed tax liability as far as the service provided to the domestic recipients are concerned, a sum of Rs.40,57,237/- has been paid towards tax together with interest at Rs.4,80,156/- on the following dates.

18. It is submitted that out of the aforesaid sum of Rs.40,57,237/-, a sum of Rs.7,48,111/- was paid on 24.02.2017 and a further sum of Rs.22,64,907/- was paid on subsequent dates as detailed below:-

Sl.No.	Date	Amount	Heads
1	24.02.2017	Rs. 7,48,111/-	Service Tax Liability
2	31.08.2017	Rs. 13,15,990/-	Service Tax Liability
3	15.08.2018	Rs. 83,184/-	Service Tax Liability
4	09.05.2020	Rs. 3,85,577/-	Discharge of Service Tax Liability
5	20.09.2020	Rs. 4,80,156/-	Discharge of Service Tax Liability
Total :		**Rs. 30,13,018/-**	

19. The learned Senior Counsel for the Petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court and various High Courts and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in support of his contention:

i. **Suprasesh General Insurance Services and Brokers Private Limited** Vs. **Commissioner of Service Tax and others**, (2015) 86 VST 160 (Mad) (Madras-DB).
ii. **Indian Association of Tour Operators** Vs. **Union of India**, 2017 SCC Online Del 10178 (Delhi) (DB).
iii. **Glaxo Smithkline Asia Private Limited** Vs. **Commissioner of Central Excise, Nashik**, 2018 SCC Online CESTAT 5375.
iv. **National Engineering Industries Limited** Vs. **Commissioner of Central Excise, Jaipur**, (2016) 42 S.T.R. 537, MANU/CE/0706/2015.
v. **Commissioner of Central Excise, Jaipur** Vs. **National Engineering Industries Limited**, 2017 SCC Online Raj 4248.
vi. **Jubilant Chemsys Limited** Vs. **Commissioner of Customs and Central Excise**, 2017 SCC OnLine CESTAT 3842.
vii. **Linde Engineering India Private Limited** Vs. **Union of India** in Spl.Civil Appn No.12626 of 2018 dated 16.01.2020.
viii. **M/s.Cineyug Worldwide** Vs. **Union of India and another**, 2016 SCC OnLine Bom 56.

ix. **HH Interior and Auto Components Limited** Vs. **Commissioner of Central Excise**, [2016] 40 GSTR 111 (Delhi), MANU/DE/1609/2016.
x. **Union of India** Vs. **Kunisetty Satyanarayana**, (2006) 12 SCC 28.
xi. **Siemens Limited** Vs. **State of Maharashtra and others**, (2006) 12 SCC 33.
xii. **Oryx Fisheries Private Limited** Vs. **Union of India and others**, (2010) 13 SCC 427.
xiii. **Mars Shipping Services** Vs. **Commissioner of Customs (Seaport-Import), Chennai**, 2015 SCC OnLine Mad 13996.
xiv. **Cosmic Dye Chemical** Vs. **Collector of Central Excise, Bombay**, (1995) 6 SCC 117.
xv. **Freight Systems (India) Private Limited** Vs. **Commissioner of Central Goods and Services Tax and Central Excise-Audit II Commissionerate, Chennai**, 2019 SCC OnLine Mad 39215.
xvi. **Hitachi Power Europe GMBH Project Office, Represented by its Commercial Manager** Vs. **Central Board of Indirect taxes and Customs and others**, 2019 SCC OnLine Mad 4005.
xvii. **Amadeus India Private Limited** Vs. **Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate**, 2019 SCC OnLine Del 8437.
xviii. **Gulati Enterprises** Vs. **Central Board of Indirect Taxes and Customs and others**, 2022 SCC OnLine Del 1501.
xix. **Commissioner of Central Excise and Service Tax** Vs. **Glaxo Smithkline Asia Private Limited**, 2023 SCC OnLine CESTAT 964.
xx. **M/s.Picasso Overseas and others** Vs. **The Director General of Revenue Intelligence and another**, 2009 DHC 7381 DB.
xxi. **SDL Auto Private Limited and another** Vs. **Commissioner of Central Excise and another**, 2018 SCC OnLine Del 13295.

20. Defending the Impugned Order, the learned Standing Counsel for the

Respondents would submit that the Order passed by the Customs, Central Excise and Service Tax Settlement Commission does not warrant any interference as the powers have been rightly exercised by the Customs, Central Excise and Service Tax Settlement Commission.

21. Learned Standing Counsel for the Respondents would further submit that the Show Cause Notice also cannot be said to be partly time barred due to outbreak of Covid-19 pandemic and in view of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) **(TOLA) Ordinance, 2020** which was later replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) **(TOLA) Act, 2020**, issued on 31.03.2020 wherein, relaxation has been provided in Chapter-V of the Central Excise Act, 1944.

22. Learned Standing Counsel for the Respondents also would submit that there has been a violation of Rule 4A of the Service Tax Rules, 1994 inasmuch as no invoice was raised by the Petitioner as is contemplated under the provisions of the aforesaid Rules.

23. That apart, it is submitted that the 1st Respondent Customs, Central Excise and Service Tax Settlement Commission has come to a fair conclusion that there are not only disputed questions of fact but also disputed question of law and since complexity is involved, the Customs, Central Excise and Service Tax Settlement Commission has rejected the application under Chapter-V of the Central Excise Act, 1944 as made applicable for settling the dispute under the Finance Act, 1994.

24. Finally, learned Standing Counsel for the Respondents has also placed reliance on the following decisions of the Allahabad High Court and that of this Court in the context of power of the Settlement Commissioner under Chapter-V of the Central Excise Tax Act, 1944:

i. **Vinay Wire & Poly Product Private Limited** Vs. **DIR. General of Central Excise**, 2014 (307) E.L.T. 438 (All.)
ii. **Sri Vela Smelters Private Limited** Vs. **Customs and Central Excise Settlement Commission, Chennai**, 2019 (367) E.L.T. 262 (Mad.)
iii. **Diksat Transworld Limited** Vs. **Commissioner of Service Tax-II, Chennai**, 2021 (52) G.S.T.L. 6 (Mad.)

25. It is submitted that the Petitioner cannot expect the case to be settled merely because an application has been filed. It is submitted that as per Section 32F(8) of the Central Sales Tax Act, 1944, the Order passed by the Settlement

Commission under Sub-Section 5 has to merely provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

26. It is submitted that a plain reading of the provision of Sub-Section 5 and Sub-Section 8 to Section 35F of the Central Excise Tax Act, 1944, the Settlement Commissioner has to merely pass such Order as he / she thinks fit.

27. It is submitted that after examination of the records and the Report of the Commissioner of Central Excise, the Customs, Central Excise and Service Tax Settlement Commission comes to a conclusion that this is not a fit case for being settled under Chapter-V of the Central Excise Act, 1944 as made applicable to settle the dispute under Section 83 of the Finance Act, 1994.

28. It is therefore submitted that the Petitioner has to answer the

questions raised in the Show Cause Notice impugned in W.P.No.11470 of 2021.

29. By way of rejoinder, the learned Senior Counsel for the Petitioner would submit that the powers of the Settlement Commissioner are wide. A specific reference was made to Section 32-I(2) of the Central Excise Act, 1944, wherein it has been clearly stated that where an application made under Section 32E has been allowed to be proceeded with under Section 32F, the Settlement Commission shall, until an order is passed under sub-section (5) of Section 32F, have, subject to the provisions of sub-section (4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

30. Learned Senior Counsel for the Petitioner would submit that the Settlement Commissioner has wide power and is vested with the Central Excise Officers under the Act or the Rules made thereunder.

31. Finally, the learned Senior Counsel for the Petitioner would submit that Mandatory Pre-Consultation has also not been complied with in terms of Circular No.1053/02/2017-CX in F.No.96/1/2017-CX.I, issued by the Central

Board of Excise and Customs, Department of Revenue, Ministry of Finance dated 10.03.2017.

32. I have considered the arguments advanced by the learned Senior Counsel for the Petitioner and the learned Standing Counsel for the Respondents. I have also perused the notes and submission filed on behalf of the Petitioner.

33. There are several disputed questions of facts and therefore the Writ Petition under Article 226 of the Constitution of India cannot be maintained at the behest of the Petitioner. The 1st Respondent, the Customs, Central Excise and Service Tax Settlement Commission, presided by its Vice-Chairman has come to a fair conclusion that the case of the Petitioner cannot be settled under the provisions of Section 32 of the Central Excise Act, 1944 as made applicable for settling the dispute under Section 83 of the Finance Act, 1994. Therefore, there is no scope for settling the dispute.

34. The Petitioner has not been able to point out any infirmity in the Order bearing No.03/2021-ST dated 22.03.2021 of the 1st Respondent, which has been impugned in W.P.No.11466 of 2021. Further, the scope of judicial

review under Article 226 of the Constitution of India is confined only to the decision making process and not the decision *per se*.

35. The Petitioner has an alternate and effective remedy to reply to the Show Cause Notice bearing F.No.INV/DGCEI/CHZU/41/ST/2017-PF-1/4559 dated 24.06.2020, issued by the 3rd Respondent which has been impugned in W.P.No.11470 of 2021.

36. According to the Petitioner, the Petitioner is not liable to pay any additional tax. It is for the Petitioner to establish the same before the Adjudicating Authority named in the aforesaid Show Cause Notice bearing F.No.INV/DGCEI/CHZU/41/ST/2017-PF-1/4559 dated 24.06.2020, impugned in W.P.No.11470 of 2021.

37. As such, I find that there is no scope for interference with the Impugned Order bearing No.03/2021-ST dated 22.03.2021, passed by the 1st Respondent, the Customs, Central Excise and Service Tax Settlement Commission, presided by its Vice-Chairman.

38. Therefore, these Writ Petitions are liable to be dismissed.

39. The Petitioner is directed to file a detailed reply to the Impugned Show Cause Notice dated 24.06.2020 issued by the 3rd Respondent in W.P.No.11470 of 2021, within a period of 30 days from the date of a receipt of a copy of this order.

40. The said Adjudicating Authority mentioned in the Impugned Show Cause Notice dated 24.06.2020 shall pass a speaking order on merits as expeditiously as possible, preferably, within a period of 3 months from the date of receipt of a copy of this order. Needless to state, the Petitioner shall be heard before Final Orders are passed.

41. In the result, these two Writ Petitions are dismissed with the above directions. No costs. Connected Writ Miscellaneous Petitions are closed.

23.04.2025

Neutral Citation: Yes / No

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To:

1.The Vice Chairman,
The Customs, Central Excise and Service Tax
Settlement Commission,
Additional Bench, II Floor,
Narmada Block, Custom House,
Rajaji Salai, Chennai – 600 001.

2.The Commissioner of GST and Central Excise,
Chennai North Commissionerate,
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3.The Joint Director,
Office of the Directorate General of Goods
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No.16, Greams Road,
BSNL Building,
Tower II, V Floor,
Chennai – 600 006.

C.SARAVANAN, J.

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Pre-delivery Common Order in
W.P.Nos.11466 and 11470 of 2021

23.04.2025