BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	09.01.2025
Pronounced on	29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

W.A.(MD) No.641 of 2019
and
C.M.P.(MD) No.5348 of 2019

Joint Commissioner,
Office of the Commissioner of CGST &
Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai-625 002. ... Appellant/Respondent

-vs-

Aravind Eye Hospital,
(Run by the Govel Trust),
Represented by Mr.G.Srinivasan,
Present (Govel Trust),
K.K.Nagar,
Madurai-625 002. ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of this Court, dated 19.11.2018 made in W.P.(MD) No.6020 of 2018.

For Appellant : Mr.N.Dilipkumar

For Respondent : Mr.Joseph Prabakar

JUDGMENT

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

This appeal is preferred by the respondent/Joint Commissioner challenging the order of the learned Single Judge of this Court in W.P(MD)No.6020 of 2018, dated 19.11.2018.

2.The brief statement of fact that may be relevant for the current purpose is that:

> The Joint Commissioner had issued a show cause notice to the respondent alleging that the respondent had failed to pay service tax for certain courses conducted by them on payment for certain assessment years.

3.This Court is informed that originally a show cause notice was issued by the Commissioner of Central Excise, but even this was pending response. There was a change in the pecuniary limit and the case, thus, fell into the hands of the Joint Commissioner, the appellant herein. The respondent eventually responded to the show cause notice and participated in an enquiry conducted by the appellant and suffered a direction from the Joint Commissioner to pay the service tax, which the respondent had defaulted to pay with interest and penalty. This came to be challenged by the respondent before this Court in W.P(MD)No.6020 of 2018 on multiple grounds.

4.The learned single Judge allowed the Writ Petition on a solitary ground that the Joint Commissioner ought to have issued a fresh show cause notice before proceeding to hold the enquiry and held that the enquiry was faulty. This is now under challenge in this appeal.

5.The learned counsel for the appellant would contend that the order of the Joint Commissioner was challenged on multiple grounds, which includes the liability of the respondent to pay service tax on certain heads. It is made clear that this Court would not enter into pre-form facts something which the Appellate Tribunal ought to do, but, to confine its enquiry to the alleged error in jurisdiction of the appellant as has been found by the learned single Judge.

6.The learned counsel appearing for the respondent would contend that a circular cannot take place in the form of a notification, since it is only for departmental understanding and unless a notification is issued and published in the Government Gazette under the Central Board of Excise and Customs (CBEC), the same does not have any statutory force and to that effect, he drew our attention to the Notification No.44/2016-S.T., dated 28.09.2016. He would further contend that the notification of amendment is with regard to adjudication in respect of Section 83A of the Finance Act, 1994, whereas the factual matrix of the case on hand relates to Sections 73, 75 and 78 of the said Act and to an extent of Rs.98,00,000/- and therefore, for want of statutory competency, the same has been quashed by the learned Single Judge.

7.After hearing the learned counsel appearing for the appellant, he is called upon to produce materials to the effect that Clause 2.11 of Circular No. 1053/2/2017-CX, dated 10.03.2017 has been complied with.

8(a) Pursuant to the direction, the learned Senior Standing Counsel for the appellant has filed notifications and circulars, ie., Notification No.30/2005-ST, dated 10.05.2005, Circular Nos.130/12/2010-ST, 1049/37/2016-CX and 1053/2/2017-CX, dated 20.09.2010, 29.09.2016 and 10.03.2017 and Notification No.44/2016-ST, dated 28.09.2016.

8(b) In circular No.1053/2/2017-CX, dated 10.03.2017 at para 2.11 is extracted hereunder for ready reference:

> *"**2.11-Authority to adjudicate:** A SCN must state the authority to whom the reply to the show cause notice required to be answered. In case of seizure of goods, the issue of show cause notice is mandatory before any order for confiscation of goods is passed. Where there is a change in the adjudicating authority, a corrigendum to the SCN may be issued and served on the notices to ensure that the notices have a fair opportunity to present their case to the appropriate adjudicating*

authority. Corrigendum to SCN is issued due to change in jurisdiction, monetary limit, re assignment, etc. The authority who issued the SCN has to issue the corrigendum and then transfer the file to the new adjudicating authority."

8(c) Further, Notification No.44/2016-ST, dated 28.09.2016, in respect of Section 83A of the Finance Act, 1994, has also been placed before us.

8(d) In support of his contention, he has relied upon the Judgments of the Hon'ble Supreme Court of India in ***Pahwa Chemicals Pvt. Ltd., Vs. Commissioner of Central Excise, Delhi*** reported in ***2005 (181) E.L.T. 339 (S.C***); ***Aeon's Construction Products Limited Vs. Commissioner of Central Excise, Chennai*** reported in ***2005 (184) E.L.T. 120 (S.C.)***; and ***Nizam Sugar Factory Vs. Collector of Central Excise, A.P.*** reported in ***2006 (197) E.L.T. 465 (S.C***), wherein the factual matrix of the cases are relating to the issuance of multiple show cause notices and hence, the same is distinguishable from the facts of this case.

9.After hearing the rival submissions and also the citations and the circulars placed before us, we find that, initially, a show cause notice was issued by the higher officer on 19.10.2015 and subsequently, the same was made over to a lower officer on 29.09.2016 and after hearing the parties, the original impugned order was passed. Aggrieved against the said order, the above said writ petition was filed before this Court. By an order dated 19.11.2018, the co-ordinate brother Justice, Mr.G.R.Swaminathan, has passed the following order:

> *"...2.I am of the view that the order impugned in this writ petition is to be set aside on a short ground. The authority which passes the final order ought to have issued the show cause notice was issued by the Commissioner while the final order was passed by the Joint Commissioner.*
>
> *3.Since, the respondent authority did not issue the show cause notice, I am of the view that the order impugned in this writ petition is liable to be set aside. The matter is remitted to the file of the respondent who shall issue a show cause notice and after holding an enquiry, pass orders in accordance with law.*
>
> *4.I make it clear that I have not gone into or considered any of the other contentions raised by the learned counsel for the writ petitioner. All the defences are left open."*

10.Aggrieved against the said order, the present appeal has been filed by the respondent/Joint Commissioner as stated *supra*.

11.The rival contentions placed by the respective parties are considered by this Court. After taking into consideration the rival submissions, the learned Single Judge has set aside the impugned order passed by the authority and also remitted the matter for fresh consideration. On perusal of the show cause notice, we find that the show cause notice was issued by the Commissioner while the final order was passed by the Joint Commissioner. On that ground, the impugned order was set aside and the matter was remitted back to the Joint Commissioner for fresh consideration. On perusal of the original impugned order passed by the Joint Commissioner, we find that the very same point was agitated by the respondent herein (writ petitioner) and in the original impugned demand order was confirmed under Section 73(2) of the Finance Act, 1994 and appropriate interest was levied under Sections 75, 78, 77(1)(c) and 77(2) of the Finance Act, 1994. As against that order, the appeal lies to the Commissioner of Central Excise (Appeals), Coimbatore at Madurai.

12.To the Court question, the learned Senior Standing Counsel has stated that even the appellate authority mentioned in the original impugned order is lower in the rank than that of the officer, who had issued the show cause notice assumes significance and which we feel that is impermissible in law. When a show cause notice has been issued by the higher officer and after entering the appearance and after commencing the enquiry, in the middle of the enquiry, the matter has been made over to the lower officer, who had passed an order, here in this case, the Joint Commissioner. As against that order, appeal lies to the Commissioner of Central Excise (Appeals), Coimbatore at Madurai. As submitted by the learned Senior Standing Counsel, that the officer is also below the rank of the officer had issued the show cause notice, which is impermissible both under the administrative law as well as under the Finance Act.

13.At this juncture, we like to point out that besides the observations passed by the learned Single Judge of this Court as indicated above, we also notice that at para 2.11 (Authority to adjudicate) cited *supra* and hence, whenever there is a change of adjudicating authority, a corrigendum has to be issued.

Admittedly, in the present case, no corrigendum was issued as per the circular, dated 10.03.2017, which also goes against the appellant.

14.The learned counsel appearing for the respondent would further contend that the respondent herein is running an Eye Hospital and apart from that, they are conducting training courses on monetary considerations, which are not recognized by any statutory authority like M.G.R.University. Hence, the Department treated the courses conducted by the respondent as commercial courses and training. The respondent has collected consultancy fees from the participants and therefore, the same is taxable under service tax. The disputed courses offered by the respondent are not related to Health Care Services but are offered on a commercial basis without recognition from any Statutory Health Authorities. The Commissioner of GST and Central Excise, Madurai, issued a show cause notice dated 19.10.2015 demanding service tax to the tune of Rs. 90,20,856/- from the respondent apart from demanding interest and penalties.

15.In view of the above and since the impugned order was set aside only on the technicalities, we are not proposed to delving into details as to whether the alleged service is said to have been rendered by the respondent to attract the GST or not, which is left open to be decided by the competent authority and hence, we find that there is no positive reason to interfere with the order passed by the learned Single Judge, besides, and also for the non-compliance of the circular dated 10.03.2017 at para 2.11 as cited *supra,* the order of the learned Single Judge, dated 19.11.2018 in W.P.(MD)No.6020 of 2018, is confirmed, and hence, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
29.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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RMT.TEEKAA RAMAN, J.
AND
N.SENTHILKUMAR, J.

sji

Pre-Delivery Judgment Made In
W.A.(MD) No.641 of 2019
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