

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE FIFTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**

WRIT PETITION NO: 28690 OF 2021

Between:

M/s. B. Aleem Miah Works Contractor, H.no. 44/18-G-1. Vishwa Apartment,
Prakash Nagar, Kurnool-518004, Kurnool District, A.P.

...PETITIONER

AND

1. The Commissioner of Central Tax,, Rangareddy GST Commissionerate, Ground Floor, Posnett Bhavan, Tilak Road, Ramkote, Hyderabad-500001.
2. The Union of India, rep. by its Secretary (Finance). Ministry of Finance, North Block, New Delhi 110001.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of MANDAMUS holding that the impugned Show Cause Notice issued by the First Respondent vide O.R. NO. 153/2021-Adjn{Commr}ST/DIN 2021105YQ00088408A, dated 18-10-2021, proposing to impose Service Tax, Interest u/S. 73(1), Penalty u/S. 77, Penalty u/S. 78 and Late Fee u/S. 70, for the Tax Period 2016-17 and 2017-18 (up to June, 2017), under the Service Tax Act (Chapter V of the Finance Act, 1994), proposing to tax receipts in the State of A.P. and exempted services, is barred by limitation, without jurisdiction and also contrary to law and illegal and consequently set aside the same.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings, pursuant to the impugned Show Cause Notice issued by the First Respondent vide O.R. NO. 153/2021-Adjn{Commr}ST/DIN: 2021105YQ00088408A, dated 18-10-2021, for the Tax Period 2016-17 and 2017-18 (up to June, 2017), under the Service Tax Act (Chapter V of the Finance Act, 1994)

Counsel for the Petitioner: SRI G. NARENDRA CHETTY

**Counsel for Respondent No. 1: SRI B. NARASIMHA SARMA
SC FOR CUSTOMS & CENTRAL EXCISE**

**Counsel for Respondent No. 2: SRI N. RAJESHWAR RAO
ASSISTANT SOLICITOR GENERAL**

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

W.P.NO.28690 OF 2021

ORDER (Per the Hon'ble Sri Justice Ujjal Bhuyan)

Heard Mr. G.Narendra Chetty, learned counsel for the petitioner, and Mr. B.Narasimha Sarma, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of show cause notice dated 18.10.2021 issued by the Commissioner of Central Tax, Rangareddy GST Commissionerate, calling upon the petitioner to show cause as to why income declared in the Income Tax Return for the period 2016-17 and for the period 2017-18 up to June, 2017 should not be treated as income received from taxable services under the Finance Act, 1994 (briefly 'the Act' hereafter), besides levy of interest and imposition of penalty.

3. Petitioner is a works contractor, carrying out such contract works with the Governmental authorities, like construction of buildings, roads etc. According to the petitioner all such works are indivisible composite work contracts and therefore, do not attract service tax. That apart, Government of India has issued notifications from time to time exempting such services provided to the Governmental authorities from payment of service tax.

4. On the basis of information received from the Income Tax Department, respondent has *prima facie* taken a view that petitioner had rendered certain taxable services and declared the value of the services in its return of income under the Income Tax Act, 1961, but as the service provider had not paid any service tax, the same has resulted in non-payment of service tax. It is in such circumstances, that the impugned show cause notice has been issued.

5. On a query by the court, learned counsel for the petitioner submits that the show cause notice has been issued under sub-section (1) of Section 73 of the Act. According to him, the limitation for issuing show cause notice is thirty days, which period had admittedly expired long back. Of course, under the proviso, for the reasons mentioned therein, the limitation period for issuance of show cause notice in a case where service tax not levied; or paid, or short levied, or short paid, or erroneously refunded, stands extended to five years.

6. Accordingly to learned counsel for the petitioner, first and foremost, the petitioner is not required to pay service tax for the service provided to Governmental authorities; secondly, the limitation period under sub-section (1) of Section 73 of the Act, had expired long back. The extended period of limitation as per the proviso, cannot be made applicable

in the case of the petitioner, because none of the conditions mentioned in the proviso, which enable the extension of the period of limitation, would be available against the petitioner, as there is no fraud, nor any collusion, nor willful mis-statement; nor suppression of facts, nor contravention of any of the provisions of the Chapter V of the Act. That apart, learned counsel for the petitioner submits that respondent is pre-determined to levy service tax on the petitioner and, therefore, response to the show cause notice would be a mere formality.

7. On the other hand Mr.B.Narasimha Sarma, learned counsel for the respondents, submits that at this stage it cannot be said that the conditions mentioned in the proviso to sub-section (1) of Section 73 would not be applicable in the case of the petitioner. That is a matter of enquiry, and adjudication by the respondent No.1 upon filing of response by the petitioner. He submits that though the thirty days period would expire within two days, this court may extend the same, and direct the respondent No.1 to consider the contentions raised by the petitioner. He refers to paragraph No.5 of the impugned show cause notice and submits that despite letters and summons issued to the petitioner, there is no response from the petitioner.

8. In reply to the contentions of Mr.B.Narasimha Sarma, learned counsel for the petitioner submits that in identical cases, Kolkata High Court

in the decision reported in *SOURAV GANGULY v. UNION OF INDIA*¹ had interfered with the show cause notice. Division Bench of Madras High Court in *NANDHINI CONSTRUCTIONS v. GOVERNMENT OF INDIA*², had also granted interim relief to similarly placed service provider. That apart, Customs, Excise and Service Tax Appellate Tribunal, (CESTAT), Allahabad in the decision reported in *PAPPU CRANE SERVICE vs. COMMISSIONERATE OF CENTRAL EXCISE AND SERVICE TAX, LUCKNOW*³, has taken a view, which is being advanced by the petitioner.

9. After hearing learned counsel for the parties, and on due consideration, we are of the view that it would not be necessary for us to dilate on the decisions of the Kolkata High court and Madras High Court, as well as that of CESTAT, Allahabad in detail. Each case stands on its own merit.

10. Insofar Kolkata case (1 supra) is concerned, we find that after the show cause notice, Order-in-Original was passed by the authority, which was impugned in the writ proceeding. That apart, additional challenge made was to the instructions issued by the Central Board of Excise and Customs.

¹ (2016)93 VST 40 (Cal)

² W.A.NO.756 OF 2018 AND CMP.NO.7173 OF 2018 DATED 24.04.2018 (High Court of Madras)

³ Service Tax Appeal No.70707 of 2018(DB) – Customs, Excise and Service Tax Appellate Tribunal, Allahabad. Regional Bench – Court No.1.

11. As regards the case in the Madras High Court (2 supra) is concerned, we find that learned single Judge of the said Court had declined to grant interim relief to the petitioner, for which writ appeal was preferred. In that proceeding, challenge was made to notification dated 01.03.2015 issued by the Government of India, Ministry of Finance, New Delhi. In the facts and circumstances of that case, Division Bench of the Madras High Court held that no service tax should be levied or recovered from the appellant (petitioner).

12. In the instant case, the two aspects i.e., whether the petitioner had provided services to only Governmental authorities, and not others, and even if provided to Governmental authorities, whether the contracts were indivisible, or composite, and secondly whether the extended period of limitation as per the proviso to sub-section (1) of Section 73 of the Act, would be applicable or not, would depend upon the factual examination and adjudication by the adjudicating authority. We are of the view that to preempt the adjudicating authority from carrying out the said exercise at the threshold would not be justified.

13. From a reading of the show cause notice dated 18.10.2021, no definite view can be taken at this stage, that the said notice is beyond the period of limitation in terms of the proviso to sub-section (1) of Section 73. These are matters for examination and adjudication by the primary authority.

In the circumstances we are of the view that it would be in the interest of justice if the petitioner is relegated to the forum of adjudication before the respondent No.1. Ordered accordingly.

14. To enable the petitioner to file his reply to the show cause notice dated 18.10.2021, we direct that petitioner may file his reply to the aforesaid notice within a period of thirty days from today.

15. If the petitioner files his reply to the show cause notice within the period as mentioned above, the same may be considered by respondent No.1 in accordance with law.

16. A personal hearing shall also be afforded to the authorised representative of the petitioner.

17. All contentions are kept open.

18. With the above direction writ petition is disposed of.

19. Interlocutory applications pending, if any, shall stand closed. No order as to costs.

//TRUE COPY//

SD/-T.SRINIVAS
ASSISTANT REGISTRAR



SECTION OFFICER

To,

1. The Commissioner of Central Tax,, Rangareddy GST Commissionerate, Ground Floor, Posnett Bhavan, Tilak Road, Ramkote, Hyderabad-500001.
2. The Secretary (Finance). Ministry of Finance, State of Telangana North Block, New Delhi 110001.
3. One CC to Sri G Narendra Chetty Advocate [OPUC]
4. One CC to Sri B. Narasimha Sarma, SC for Customs & Central Excise (OPUC)
5. One CC to Sri Namavarapu Rajeswara Rao, Assistant Solicitor General (OPUC)
6. Two CD Copies
7. One Spare Copy

MBC



HIGH COURT

DATED: 15/11/2021



ORDER

WP.No.28690 of 2021

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

~~8~~
~~REKHA~~
~~23/11/2021~~