

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C)No.28 of 2023

Shri Keshab Purkayastha

.....Petitioner.

-V-E-R-S-U-S-

The Union of India and Others.

.....Respondents.

For Petitioner(s)	:	Mr. S. S. Dey, Sr. Advocate. Ms. A. Chakraborty, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Deputy SGI.

Order dated 17th January, 2023

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH

Heard Mr. S. S. Deb, learned senior counsel assisted by Ms. A. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Deputy SGI, appearing for the respondent-Union of India.

[2] This present petition has been filed under Article-226 read with Article-215 of the Constitution of India praying for adjudicating the legality and validity of the order dated 25.03.2022 issued by the respondent No.5 and order dated 16.11.2022 issued by the respondent No.3 as well as the entire proceeding contained therein. Also violation of the provisions of the Finance Act, 1994 as well as the Rules made thereunder and the relevant circular under No.1053/02/2017-CX dated 10.03.2017 and further for non-consideration of the provisions contained in Clause-14 of the Mega Exemption notification No.25/2012 dated 20.06.2012 by the respondent No.3.

[3] The fact of the case in brief is that the petitioner executed several contractual works under the N.F. Railways within the State of Assam in the financial year 2016-2017. An issue was raised by the authorities of the office of the Commissioner, Central GST and Central Excise Commissionerate,

Guwahati, Assam regarding payment of service tax amounting to Rs.2,70,27,400.50/- to be paid by the petitioner. Pursuant to a regular proceeding, the respondent No.2 i.e. the Principal Commissioner, Central GST and Central Excise Commissionerate, Guwahati, Assam came to a conclusive finding that by virtue of the Clause-14 (a) of Mega Exemption Notification No.25/2012 dated 20.06.2012 issued by the Government of India, the petitioner has been exempted from payment of abovementioned service tax vide order dated 21.09.2022.

[4] However, on the same fact i.e. contract works executed in the State of Assam, the respondent No.3 i.e. the Commissioner, CGST & Central Excise, Agartala again raised demand to the petitioner for payment of service tax amounting to Rs. 2,70,27,400.50/-. Being faced with the aforesaid situation, the petitioner brought to the notice of the respondent No.3, the order dated 21.09.2022 issued by the respondent No.2 vide email dated 18.10.2022 in cgstantievasion@gmail.com informing him about the order by which exemption was granted to the petitioner.

[5] However, without taking into consideration, the order dated 21.09.2022 issued by the Principal Commissioner at Guwahati, the respondent No.3 acted beyond his jurisdiction and issued the palpable illegal order dated 16.11.2022, thereby, causing grave injustice to the petitioner. Hence, the present petition has been filed by the petitioner.

[6] Mr. S. S. Deb, learned senior counsel assisted by Ms. A. Chakraborty, learned counsel appearing for the petitioner has submitted that the petitioner had never executed any contractual works in the State of Tripura, rendering himself liable to be assessed under service tax etc. within the State of Tripura, the respondent No.5 did not have any jurisdiction to issue the summons dated 07.03.2022 and the petitioner bona fide believing that the same was issued under a mistake of fact and hence, did not reply to the same.

[7] Thereafter to the utter shock and surprise of the petitioner, the respondent No.5 in a most illegal and arbitrary and unreasonable manner and without having any jurisdiction issued the impugned order dated 25.03.2022 to the petitioner to deposit Rs.2,35,02,088/- against service tax under Section-68(1) of the Finance Act, 1994 along with interest under Section-75 of the Finance Act and penalty under Sections-77 & 78 of the Finance Act. Thereafter, receiving the impugned order dated 25.03.2022, the petitioner submitted a detailed written submission dated 11.04.2022 before the respondent No.5 by registered post on 19.04.2022 praying for a reconsideration of the case of the petitioner as the petitioner cannot be made liable to pay any service tax in view of the exemptions granted by the Government of India in the Ministry of Finance, vide Mega Exemption Notification No.25/2012 dated 20.06.2012 whereby, certain services have been excluded from the purview of service tax.

[8] In the said written submission, the petitioner also quoted the Clause-14(a) of the said notification, which directly applicable to his case. For the purpose of reference, Clause-14 may be extracted as under:

“14.Services by way of construction, erection, commissioning or installation of original works pertaining to-

(a) Railways, excluding monorail and metro:

Explanation- The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st march, 2016, on which appropriate stamp duty, was paid, shall remain exempt. Substituted vide Notification 9/2016-Service Tax with effect from 1 March, 2016....”

[9] The petitioner was served with a notice dated 25.02.2022 by the respondent No.4 regarding service tax returns for the Financial Year-2016-17 and thereafter, a demand cum show cause notice dated 19.04.2022 was issued by the Principal Commissioner, CGST & Central Excise Commissionerate, Guwahati i.e. the respondent No.2 herein calling upon the petitioner to show cause as to why service tax amounting to Rs.2,70,27,400.50/- only for the period of Financial Year 2016-17 should not be demanded and recovered from

him under Proviso to Section-73(1) of the Finance Act, 1994 read with Section-174(2) of the Central Goods and Services Act, 2017.

[10] On 21.04.2022, just after two days of receiving the demand cum show-cause notice dated 19.04.2022, the petitioner was served with another demand cum show cause notice by the respondent No.2. Mr. Dey, learned senior counsel has contended that the subsequent demand cum show cause notice dated 21.04.2022 was issued by the respondent No.2 as Commissioner, Central Goods and Service Tax, Agartala while he was holding the substantive post of Principal Commissioner, GST and Central Excise Commissionerate, Guwahati. Hence, it is the same person who had issued both the demand cum show cause notices.

[11] As both the demand cum show cause notices were issued by same respondent No.2, the petitioner chose to submit his written reply dated 18.05.2022 before the respondent No.2 in response to the demand cum show cause notice dated 19.04.2022. In the said written statement the petitioner prayed for a reconsideration of the case that the petitioner cannot be made liable to pay any Service Tax in view of the exemptions granted by the Government of India in the Ministry of Finance, vide the Mega Exemption Notification No.25/2012 dated 20.06.2012 wherein, certain services have been excluded from the purview of service tax.

[12] He has further clarified that the works executed by him under the N.F. Railway during the Financial Year 2016-17 comes under the exempted services granted by the Government of India, Ministry of Finance (Department of Revenue) through the aforementioned Mega Exemption Notification No.25/2012. The respondent No.2 passed the final order on 21.09.2022 holding that on scrutiny of the records available it is found that the petitioner was basically providing work contract job to the N.F. Railways as a main contractor and for the financial year 2016-17, it had executed contract work for the value

of Rs.18,01,82,670/- to the N.F. Railway which is exempted under the Mega Exemption Notification No.25/2012 dated 20.06.2012.

[13] Be it stated herein that as per Clause-14.3 of the Circular under No.1053/02/2017-CX dated 10.03.2017, at least three opportunities of personal hearing should be granted by the authorities before the final adjudication of a matter. In the present case, only two opportunities were given on 16.09.2022 and 29.09.2022. Even after communication of the order dated 21.09.2022 via email on 18.10.2022, the respondent No.3 did not provide the third opportunity to the petitioner in an illegal, arbitrary and high handed manner.

[14] The impugned order dated 16.11.2022 passed by the respondent No.3, apart from being illegal, arbitrary and without jurisdiction, is apparently perverse and fraught with patent illegality since it was conclusively decided by the respondent No.2 after consulting the relevant laws that the services rendered by the petitioner during the financial year 2016-17 are exempted from the purview of Service Tax, particularly in view of the Clause-14(a) of the Central Government's Mega Exemption Notification No.25/2012 dated 20.06.2012. Hence, the impugned order dated 16.11.2022 as well as the order dated 25.03.2022 are liable to be set aside and quashed.

[15] The respondent No.3 while passing the impugned order dated 16.11.2022 has acted without any jurisdiction in view of the admitted position of fact that whatever contractual job was executed by the petitioner during the financial year 2016-17 was under the N.F. Railways within the State of Assam and under the territorial jurisdiction of the respondent No.2 and there was nothing on record to even remotely suggest that any work was executed by the petitioner within the State of Tripura i.e. within the territorial jurisdiction of the respondent No.3.

[16] In view of the facts and circumstances narrated hereinabove, the impugned demand stands set aside since, a non-speaking order has been passed without dealing with regard to the exemption clauses and the notification issued

thereunder. The respondents shall consider the explanation in the light of the exemption notification No.25/2012 and then pass a speaking order after giving an opportunity of personal hearing. It is further made clear that till a decision is taken, no adverse action shall be initiated against the petitioner.

[17] It is represented by the learned senior counsel appearing for the petitioner that with regard to the same cause of action when there is a demand raised by the Guwahati Range Commissioner of the same authority, the Range Commissioner itself has reconsidered the same and has withdrawn the said demand in favour of the petitioner. The petitioner is at liberty to place all such materials in support of his contentions before the respondent authority.

JUDGE

CHIEF JUSTICE (ACTING)

A. Ghosh



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