



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 5th OF AUGUST, 2025

WRIT PETITION No. 30467 of 2023

*M/S STUDY METRO EDU CONSULTANT PVT. LTD. THROUGH ITS
AUTHORISED SIGNATORY ABHISHEK BAJAJ*

Versus

JOINT DIRECTOR AND OTHERS

Appearance:

Shri P. M. Choudhary, learned Senior Counsel assisted by Shri Madhav Khandelwal, learned counsel for the petitioner.

Shri Prasanna Prasad, learned counsel for the respondents / CGST Department.

O R D E R

Per : Justice Vivek Rusia

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the show-cause notice 30.09.2023 issued by Joint Director, Directorate General of Goods & Service Tax Intelligence (DGGSTI).

FACTS OF THE CASE IN BRIEF

02. The petitioner is company registered under the provisions of Companies Act, 2013 having its registered office at 517, 5th Floor, Shekhar Central, A.B. Road, Manormaganj, Indore. The petitioner is registered under the GST Laws. The petitioner is a 'Software as a Service' (SaaS) based company providing student recruitment



solution which includes overseas advisory services to the foreign universities, services to the students seeking admission in foreign universities and receives consideration from the respective service recipient in lieu of the services rendered to them.

2.1. According to the petitioner, as regards the consideration received from the students for the services provided, the petitioner is duly discharging its GST liability and so far as rendering the overseas services to the foreign universities are concerned, it comes within the definition of 'export of service' under Section 2(6) of the Integrated Goods & Service Tax Act, 2017 (in short 'the IGST Act'), hence, the petitioner is not liable to pay GST.

2.2. According to the petitioner, the respondents have initiated the proceedings with the sole objective to bring the services in the definition of 'intermediary services' as defined under Section 2(13) of the IGST Act by treating the petitioner as an agent of foreign universities.

2.3. The petitioner was served with a summon under Section 70 of the Central Goods & Service Tax Act, 2017 (in short 'the CGST Act') by the Intelligence Officer, DGGSTI calling upon the petitioner to attend and produce the documents relating to its activities.

2.4. Shri Abhishek Bajaj, Director of the petitioner / Company appeared and his statement was recorded on various dates. The petitioner was served with a notice dated 18.11.2022 alleging non-payment of GST on intermediary services.

2.5. The petitioner submitted a detailed reply to the said notice denying it as an intermediary services. The enquiry continued by calling the petitioner again and again with all connected information.



The petitioner duly participated in the enquiry and finally, when authority came to the conclusion that notice under Section 74 of the CGST Act is liable to be issued to the petitioner and show-cause notice dated 30.09.2023 was issued calling upon the petitioner to show cause before the Deputy / Assistant Commissioner, CGST, Division – 4. Hence, the petitioner has approached this Court by way of present writ petition.

SUBMISSIONS OF PETITIONER

03. Shri P. M. Choudhary, learned Senior Counsel appearing for the petitioner submits that the petitioner cannot be forced to face enquiry under Section 74 of the CGST Act. Even if the petitioner's services constitute intermediary service within the meaning of Section 2(13) of the IGST Act, the place of supply of such services of the petitioner is located at Indore and such service is deemed to be an Intra State Supply in view of Section 8(2) of the IGST Act, in fact, provisions of IGST Act cannot be invoked for levying the tax of on inter-state transaction.

04. Shri Choudhary, learned Senior Counsel further submits that respondent No.1 has issued a detailed and exhaustive show-cause notice by rejecting all the contentions of the petitioner and now, the petitioner has been called upon to appear before the Assistant Commissioner, who is sub-ordinate to the Commissioner. The authority, who has issued the show-cause notice had already made up its mind and nothing remains for the sub-ordinate authority to adjudicate in it. Therefore, the proceeding under Section 74 of the CGST Act will be a futile exercise. Hence, the present writ petition is maintainable.



05. Shri Choudhary, learned Senior Counsel contended in paragraphs – 29 & 30 of the show-cause notice, finding has been given that the petitioner is an agent of foreign universities. Likewise, in paragraphs – 36 to 37, it has been held to be intermediary and place of supply of its services in India and the services rendered by the petitioner are not export service. In paragraphs – 41, 43, 45 & 50, the contention of the petitioner has been rejected. Finally, in paragraphs – 70 & 72, finding has been given that the services are intermediary services and the liability is liable to be determined.

06. In support of the aforesaid contentions, learned Senior Counsel has placed reliance upon a judgment delivered by the Apex Court in the case of ***Siemens Limited v/s State of Maharashtra & Others reported in (2006) 12 SCC 33***, wherein the Apex Court has held that *ordinarily a Writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction. But when a notice is issued with premeditation, a writ petition would be maintainable. Even if the Courts direct the statutory to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose.*

07. Reliance has also been placed upon several judgments delivered in the cases of ***Oryx Fisheries Private Limited v/s Union of India & Others reported in (2010) 13 SCC 427***, ***M/s TRF Limited & Others v/s the Commissioner, Central Excise & Service Tax, Jamshedpur & Others reported in 2013 SCC OnLine Jhar 526***, ***Ratlam Straw Board Mills Private Limited v/s Commissioner of Sales Tax & Others reported in (1996) 29 VKN – 127***, ***Filterco &***



Another v/s Commissioner of Sales Tax, M.P. & Another reported in (2014) 24 STJ 491 (SC), Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai & Others reported in (1998) 8 SCC 1, Mulay Brothers v/s State of Madhya Pradesh & Others reported in [1991] 81 STC 269 (MP), Godrej & Boyce Mfg. Co. Ltd. v/s Union of India & Others reported in [2022] 98 GSTR 103 (Bom) and M/s Godrej Sara Lee Limited v/s The Excise & Taxation Officer – cum – Assessing Authority & Others reported in 2023 SCC OnLine SC 95.

SUBMISSIONS OF RESPONDENTS

08. *Per contra*, Shri Prasanna Prasad, learned counsel for the respondents / CGST Department has produced the copy of Circular No.31/05/2018 – GST dated 09.02.2018, in which it has been clarified that the Central Tax Officers of Audit Commissionerates and Directorate General of Goods and Service Tax Intelligence shall exercise the power only to issue show cause notice and the show cause notice shall be adjudicated by the Central Tax Officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. Therefore, the grievance of the petitioner survives that the Proper Officer will be junior to the authority who has issued the show cause notice.

09. So far as contention of Shri Choudhary, learned Senior Counsel that on various issues, the finding has been recorded by the DGGSTI is concerned, Shri Prasad submits that this Court may observe that this finding shall not influence the Proper Officer to adjudicate the matter.

10. Shri Prasad, learned counsel further submits that even



otherwise, any finding or observations recorded in the show-cause notice are not binding on the Adjudicating Authority. These are the findings *prima facie* in order to show that there is proper application of mind by the Commissioner, DGGSTI before proceeding under Section 74 of the CGST Act. Since the petitioner has raised various issues during the preliminary enquiry, therefore, in order to mete out these issues, detailed order has been passed. It is settled law that writ petition against the show-cause notice is not maintainable.

11. In support of the aforesaid contentions, Shri Prasad, learned counsel has placed reliance upon several judgments delivered in the cases of *Abhishek Mundhra v/s A.D.G., D.G. Of Revenue Intelligence, Chennai reported in 2015 (318) E.L.T. 245 (Mad.)*, *KVS Cargo v/s Commissioner of Customs (General), New Delhi reported in 2016 (342) E.L.T. 24 (Del.)*, *Creative Infopace Private Limited v/s Additional Commissioner, Chennai reported in 2010 (18) S.T.R. 553 (Mad.)* and *Jay Kumar Lohani v/s Commissioner of Central Excise, Indore reported in 2012 (285) E.L.T. (M.P.)* and a prayer has been made that the writ petition be dismissed.

APPRECIATION & CONCLUSION

12. The petitioner had already filed a reply to the show-cause notice. In the said reply, the petitioner has taken all the grounds which are taken in this petition. The only apprehension of the petitioner is that in the show-cause notice various findings have been recorded by the Joint Director, DGGSTI and the same may come in its way before the Proper Officer to adjudicate the matter under Section 74(9) of the CGST Act.

13. It is correct that the show-cause notice is very exhaustive, in



which various findings have been recorded, however, the same cannot be treated as final in nature. In fact, before issuing the show-cause notice under Section 74 of the CGST Act, detailed enquiry was conducted by DGGSTI, in which the petitioner was called upon to submit documents as well as record the statement. During the said enquiry, the petitioner appeared with the detailed reply, material and case laws, therefore, the Joint Director thought it proper to deal with all the objections and materials before coming to the conclusion that the petitioner is liable to be called upon to show-cause before Deputy / Assistant Commissioner, CGST, Division – 4. However, in the show-cause notice in paragraph – 93, the Joint Director has carefully observed that the show-cause notice is issued without prejudice to any other action / enquiry that may be taken / initiated against the Noticee Nos.I & II by agency / department including DGGI, Regional Unit, Indore. In view of the Circular dated 09.02.2018, the show-cause notice shall be adjudicated by the Central Tax Officer of the Executive Commissionerate, Indore.

14. In the present case, the Investigating Authority and the Adjudicating Authority are two different authorities. The Investigating Authority has given an opinion for issuance of show-cause notice to the petitioner. Thereafter, the Adjudicating Authority, who is the Quasi Judicial Authority shall adjudicate the matter on the basis of the material that came on record. The Adjudicating Authority shall not be influenced by any observations on merit made by the Investigating Authority, even if he is superior to the Adjudicating Authority.

15. In the reply, the respondents have clearly stated that as per



Circular dated 09.02.2018, the Proper Officer is empowered to adjudicate such matter as Deputy Commissioner or Assistant Commissioner and without prejudice to the above, if the Court deems it appropriate, the show-cause notice may be adjudicated by an officer of the rank of Additional Commissioner / Joint Commissioner and a suitable corrigendum to that effect will be issued. Therefore, in all fairness, the respondents are ready for adjudication from the officer of the rank of Additional Commissioner / Joint Commissioner. Therefore, no ground for interference is made out.

16. It is made clear that if any observations on merit of the case, which the petitioner feels are adjudication at the stage of investigation shall not come in way of the Adjudicating Authority while deciding the show-cause notice. It is also observed that if the petitioner submits an application in writing that the matter be adjudicated by Additional Commissioner / Joint Commissioner, then the respondents shall issue a necessary corrigendum, otherwise the matter will be adjudicated by the Adjudicating Authority in view of the Circular dated 09.02.2018.

17. In view of the foregoing discussion, Writ Petition stands dismissed. No order as to costs.

(VIVEK RUSIA)
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