

[2022] 145 taxmann.com 648 (TELANGANA)/[2023] 95 GST 560 (TELANGANA)/[2023] 69 GSTL 154 (TELANGANA)[11-11-2022]

ST : Writ petition filed long after expiry of limitation period for filing appeal could not be entertained



[2022] 145 taxmann.com 648 (TELANGANA)

HIGH COURT OF TELANGANA

District Roads and Buildings

v.

Union of India*

UJJAL BHUYAN, CJ

AND C.V. BHASKAR REDDY, J.

WRIT PETITION NO. 15076 OF 2022

NOVEMBER 11, 2022

Writ jurisdiction - Limitation - Thought order in original was appealable, writ Petition filed by State Government Department - Failure to file appeal against impugned order within limitation period - Names of defaulting officials not furnished - Writ Petition filed long after expiry of limitation period for filing appeal could not be entertained [Sections [85](#) and [86](#) of Finance Act, 1994 - Article [226](#) of Constitution of India] [Paras 7 and 8] [In favour of revenue]

A. Sanjeev Kumar, Ld. Special Govt. Pleader *for the Petitioner*. **Dominic Fernandes**, Ld. Counsel *for the Respondent*.

ORDER

Ujjal Bhuyan, CJ. - Heard Mr. A. Sanjeev Kumar, learned Special Government Pleader appearing for the petitioner and Mr. Dominic Fernandes, learned counsel for the respondents No. 2 to 4.

2. Petitioner before us is the District Roads and Buildings Officer/Executive Officer, Roads and Buildings Department, Medchal-Malkajgiri Division, State of Telangana.

3. By filing this petition under Article 226 of the Constitution of India, petitioner has challenged legality and validity of the order-in-original dated 16-11-2018 passed by respondent No. 4.

4. From a perusal of the order-in-original dated 16-11-2018 we find that petitioner is a State Government department and is engaged in activities related to State Government roads and buildings and providing services in relation thereto, but it was not registered with the service tax department nor did it make any service tax payment under section 69 of Chapter V of the Finance Act, 1994, though it was a service provider. Intelligence gathered revealed that Roads and Buildings department of Medchal-Malkajgiri was receiving payments for road cutting restoration charges from various parties on the right of way for laying optic fibre cables passing through Government land under their jurisdiction during the period from August, 2012 to

March, 2016. However, petitioner was not paying the service tax collected. On conclusion of investigation, show cause notice was issued to the petitioner by invoking the extended period of limitation. It appears that no reply was filed. However, at the stage of personal hearing, a written statement was filed. Finally, the following order came to be passed.

"30. Accordingly, I pass the following order:

ORDER

- (i) I classify the activity of allowing Right of way for laying of Optic Fiber cables etc., by according permission for Road cutting provided by M/s. (R&B) Medchal-Malkajgiri Division during the period from August, 2012 to March, 2016 as taxable Services viz., "Renting of Immovable Property Service"; under section 65(105)(zzzz) read with section 65(90a) of the Finance Act, 1994 till 30/06/2012 and taxable service/declared service under section 65B(44) read with section 65B(51) and section 66E(a) of the Finance Act, 1994 from 1-7-2012 onwards.
- (ii) I demand Service Tax amounting to Rs. 49,25,373/- (Rupees Forty nine Lakhs, twenty five Thousands, Three Hundred and Seventy three only) [Service Tax of Rs. 47,87,656/-, Education Cess of Rs. 91,811/- Secondary and Higher Education Cess of Rs. 45,906/- towards taxable services viz. "Renting of Immovable Property Service" provided by them during the period from August, 2012 to March, 2016 in terms of the proviso to Section 73(2) of the Finance Act, 1994 read with section 174 of CGST Act, 2017;
- (iii) I order the payment of Late fee amount to Rs. 2,00,000/- (Rupees two lakhs only) calculated @ 20,000/- maximum per return for 10 Return for not filing the ST-3 Returns for the period from 2012-13 to 2016-17 in terms of the proviso to section 70 of the Finance Act, 1994 read with rule 7C of the Service Tax Rules, 1994 and read with section 174 of CGST Act, 2017;
- (iv) I order the payment of interest at applicable rate(s) to be demanded/recovered from them under section 75 of Finance Act, 1994 on the amounts mentioned at (ii), above read with section 174 of CGST Act, 2017;
- (v) I impose a penalty of Rs. 49,25,373/- (Rupees Forty nine Lakhs, twenty five Thousands, Three Hundred and Seventy three only) [Service Tax of Rs. 47,87,656/-, Education Cess of Rs. 91,811/- Secondary ' and Higher Education Cess of Rs. 45,906/- on them under section 78 of the Finance Act, 1994 for suppression of the facts and for the contravention of the said provisions under Chapter V of the Finance Act, 1994 and Rules made thereunder read with section 174 of CGST Act, 2017;
- (vi) I impose a penalty of Rs. 10,000/- under section 77(2) of Finance Act, 1994 for the contraventions of provision of Finance Act, 1994 and the rules made thereunder read with section 174 of CGST Act, 2017."

5. Admittedly, the aforesaid order-in-original is an appealable order. However, no appeal was filed. Long after the limitation period for filing appeal was over, the present writ petition came to be filed.

6. On 24-3-2022 we had issued notice and granted conditional stay. Relevant portion

of the order dated 24-3-2022 reads as under:

'Challenge made in this writ petition is to the order-in-original dated 16-11-2018 passed by respondent No. 4 and consequential notice dated 17-3-2021 issued by respondent No. 3 to respondent No. 5/Branch Manager of the State Bank of India, Collectorate Complex Branch, Medchal-Malkajgiri, Hyderabad, under section 87B of the Finance Act, 1994 (for short 'the Act').

By the impugned order-in-original, respondent No.4 has imposed service tax of Rs. 49,25,373.00; late fee of Rs. 2 lakhs; and penalty of Rs.49,25,373.00 on the petitioner.

On a query by the Court, learned Special Government Pleader fairly submits that because of lapse on the part of certain officials, appeal could not be filed against the impugned order-in-original dated 16-11-2018 and the limitation period had long expired.

Insofar the impugned notice dated 17-3-2021 is concerned, he submits that petitioner was not aware of this notice as a copy of the said notice was not marked to the petitioner; it was a communication between respondent No. 3 and respondent No. 5.

Learned Special Government Pleader further submits that if an interim stay is not granted, the account of the petitioner may be attached under section 87(B) of the Act.

Issue notice.

Learned Assistant Solicitor General of India represented by Mr. B. Mukherjee, learned counsel, accepts notice on behalf of respondent No. 1 whereas Mr. B. Narsimha Sarma, learned Standing Counsel for the GST, accepts notice on behalf of respondents No. 2 to 4.

Petitioner may serve respondent No. 5 through the usual court process as well as through personal service and thereafter, file proof of service.

After hearing learned counsel for the parties and on due consideration, we pass the following orders:

"1. On the next date, petitioner shall inform the Court about the officials, who were responsible for not filing the appeal against the impugned order-in-original dated 16-11-2018 and what steps have been taken against them;

2. Petitioner shall deposit 25% of the tax levied in terms of the impugned order-in-original dated 16-11-2018 within thirty days from today; and

3. On such deposit, respondents No. 2 to 4 shall not act upon the notice dated 17-3-2021."

7. Since then petitioner has not furnished the names of the officers responsible for the present state of affairs. Ultimately, on 10-10-2022 after recording the submission of learned Special Government Pleader, we made it clear that if by the next date, information pertaining to names of the officials responsible for not filing the appeal against the order-in-original dated 16-11-2018 was not furnished, we may consider recalling our order dated 24-3-2022. Today also when the matter is called upon, learned Special Government Pleader representing the petitioner could not furnish the names of the State Government officials responsible for not filing the appeal.

8. In view of the aforesaid development and also considering the fact that the writ petition has been filed long after expiry of the limitation period for filing appeal, we are not inclined to entertain the writ petition. We recall our order dated 24-3-2022.

9. Writ petition is accordingly dismissed.

10. Let a copy of this order be furnished to the Chief Secretary to the Government of Telangana.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

POORNIMA

* In favour of revenue.