

M/S Classic Decorators vs Assistant Commissioner Cgst Division ... on 31 January, 2023

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

\$~2

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 871/2023 and CM No. 3389/2023

M/S CLASSIC DECORATORS

..... Petitioner

Through: Mr Mukesh Gupta, Advocate.

versus

ASSISTANT COMMISSIONER CGST

DIVISION AND ORS.

..... Respondents

Through: Mr Harpreet Singh, Senior

Standing Counsel with Ms

Suhani Mathur, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% 31.01.2023

1. The petitioner has filed the present petition, inter alia, impugning an order dated 20.12.2022 passed by respondent no.1.

2. The petitioner had filed a return in respect of service tax on 18.10.2014 for the six month period ending 30.09.2014. Subsequently, on 21.12.2015, it filed the return for the six month period ending on 31.03.2015. It is stated that the petitioner had regularly filed its service tax returns for the subsequent period as well.

3. Apparently, investigation was initiated in respect of the service tax liability of the petitioner and various notices were issued. The petitioner claims that it responded to the said notices. Thereafter, on 27.12.2019, respondent no.1 issued a demand-cum-show cause notice under Section 73(1) of the Finance Act, 1994 (hereafter 'the Finance Act'), raising a demand of 6,00,163/-. The petitioner claims that it contested the said demand. Thereafter, on 17.12.2020, respondent no.2 issued a demand-cum-show cause notice under proviso to Section 73(1) of the Finance Act and the said matter was then transferred to respondent no.1 for adjudication. The petitioner claims that it submitted its reply to the show cause notice through its letters dated 18.01.2021, 30.01.2021 and 01.02.2021. The petitioner was also afforded personal hearings on 21.07.2022 and 30.11.2022 and it submitted further replies thereafter.

4. On 20.12.2022, respondent no.1 passed an order raising a demand of 5,19,748/- including service tax and penalty.

5. The petitioner claims that the said demand was raised beyond the period of one year, as stipulated under Section 73(4B) of the Finance Act, and therefore, is barred by limitation. The petitioner had also raised a similar ground before the concerned officer. However, the same was rejected. The relevant extract of the impugned order 20.12.2022 dealing with the aforesaid contention reads as under:

"(ii) Shri Mukesh Gupta, Advocate, at point 8 of their reply dated 30.11.2022 has stated that the proceedings are time barred as per Section 73(4B) of the Act because the adjudicating order has not been passed within the time limit prescribed under the provision.

In this regard, it is submitted that the enquiry was initiated by the then Service Tax Commissionerate, Delhi - III, New Delhi and premises of the assessee were visited on 17.02.2017 by the Officers of the then Service Tax Commissionerate, Delhi III, New Delhi to ascertain the correct discharge of Service Tax liability by the assessee and subsequently transferred to Anti-Evasion branch of CGST Delhi North Commissionerate.

From the above, it is amply clear from the Demand cum SCN that assessee did not co-operate during investigations stage and in spite of repeated letters/summons issued to them, the assessee neither submit properly reply nor furnished relevant related documents to the Department, as such, the Show Cause notice was issued on 17.12.2020 under Section 73 and other provisions of the Finance Act, 1994. As such, the contention of the assessee is found not tenable."

6. The petitioner contends that there is no ground whatsoever in the impugned order, which could be read to indicate that it was not possible for the concerned authority to pass the order within the period as stipulated under Section 73(4B) of the Finance Act. Thus, the impugned order is barred by limitation. The petitioner also seeks to contest the demand on merits.

7. Although, prima facie, the contention advanced by the petitioner appears merited, however, the petitioner has an equally efficacious alternate remedy.

8. In view of the above, this Court does not consider it apposite to entertain the present petition. The same is disposed of with liberty to the petitioner to avail alternate remedies.

9. All rights and contentions of the parties are reserved.

VIBHU BAKHRU, J AMIT MAHAJAN, J JANUARY 31, 2023/RK