

(2025) 09 GAU CK 0446
In the Gauhati High Court
Case No : WP(C) Of 195 Of 2018

Baharul Islam

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 226
Finance Act, 1994 — Section 65(B), 68, 173, 174

Citation : (2025) 09 GAU CK 0446

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. Todi, S.C. Keyal

Final Decision : Disposed Of

Judgement

Sanjay Kumar Medhi, J

1. The instant application under Article 226 of the Constitution of India has been filed challenging an Order-in- Original No. 02/DCG (ST LEGACY)/GHY/2017-18 dated 20.11.2017 issued by the Deputy Commissioner, CGST & CE, Commissionerate, Guwahati. The challenge is based on the contention that the said authority does not have the jurisdiction to pass the said order. It is the case of the petitioner that the subject is under Entry 92C of List I of Seventh Schedule of the Constitution of India which has been omitted by the 101st Amendment of the Constitution with effect from 16.09.2016. Therefore, after the said date the said respondent had no authority or power to levy service tax constitutionally. The petitioner has also based the challenge on the omission of Chapter V of the Finance Act, 1994. It may however be mentioned that at the time of the arguments, it was additionally urged that there was non application of mind in making the impugned demand.

2. As per the facts projected, the petitioner was given a sub-contract by the principal contractor - M/s Simplex Infrastructures Ltd. for construction of NH-31

in the section from KM 1040.300 to KM 1013.000. By the impugned order, a demand of Rs.8,44,789/- (Rupees Eight Lakh Forty-Four Thousand Seven Hundred and Eighty Nine only) has been raised on the aspect of Manpower Recruitment and Supply Agency Services. It has been averred that the notification dated 20.06.2012 No. 25/2012 exempts levy of service tax for construction of road as well as for irrigation works and the work in question pertained to the exempted field. However, the impugned demand has been raised by ignoring the Notification No. 25/2012-ST.

3. I have heard Dr. A. Todi, learned counsel for the petitioner. I have also heard Shri S.C. Keyal, learned Standing Counsel, GST.

4. Dr. Todi, the learned counsel for the petitioner has submitted that the demand notice contain figures in tabular form from where it can be clearly deduced that the levy is on the aspect of supply of manpower. He has highlighted the aspect that the measurement has been used as "cu.m" (cubic meter) and "RMT" (running meter) which are connected with construction work and cannot be connected with the aspect of supply of labour force. He has also drawn the attention of this Court to Form 26AS which relates to the TDS and has submitted that such TDS has been made the basis of the levy which is impermissible in law. He has also highlighted that though some part of the work was for supply of manpower, the levy impugned is by construing the entire job done by the petitioner as that of supply of manpower. He has also placed before this Court a bunch of work order to fortify his submission that the works in question were for construction of roads and for irrigation purpose.

5. The learned counsel has highlighted that the scope of work included bed preparation, concreting etc. whereas, for the supply of manpower there is a separate contract which is on "as per hour basis". He has also submitted that there are purchase orders for supply of materials which has also been included in the impugned levy. He has drawn the attention of this Court to the Notification dated 20.06.2012 which clearly exempts the construction of road under Clause 13(a) and for irrigation work under Clause 12 (d). He has also clarified that the said notification under clause 29 (h) has given such exemption to the sub-contractor. He has submitted that in view of the aforesaid facts and circumstances, the impugned demand is not sustainable in law.

6. Per contra, Shri Keyal, the learned Senior Standing Counsel, CGST has however submitted that the premises on which the writ petition was structured, namely, questioning the authority is fallacious and the said aspect has been settled by the Hon'ble Division Bench of this Court in the case of Laxmi Narayan Sahu vs. Union of India and Ors. reported in 2018 (4) GLT 910. In this regard he has relied upon the relevant observations which read as follows.

"33. A conjoint reading of the provisions laid down in paragraph 37 of Kolhapur Canesugar Works Ltd. and Section 173 and 174(2)(e) would lead to a conclusion that although Chapter V of the Finance Act of 1994 stood omitted under Section

173, but the savings clause provided under Section 174(2)(c) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994.

34. In view of such conclusion, we find the writ petition to be devoid of any merit and the relief sought for interfering with the demand-cum-show cause notices of various dates issued by the Assistant Commissioner Central Goods and Service Tax of the different districts would have to stand rejected. Accordingly, the writ petitions stand dismissed.

35. Although the claim of the petitioners for interfering with the demand-cum-show cause notices had been refused but it is clarified that the respondents, if desire, may proceed ahead with the said demand-cum-show cause notices, and the same be done strictly in accordance with law, but from the point of view that the demand-cum-show cause notices came into effect from the date of this judgment."

7. On the aspect that the impugned order has not taken into consideration the works done for construction of roads and irrigation purpose, the learned Standing Counsel has submitted that in the impugned order, the aforesaid contention has been adequately dealt with. He has submitted that the petitioner, as sub-contractor was entrusted with various kinds of works which included construction of work as well as works for supply of manpower and it is only the component of supply of manpower which is the relevant aspect taken into consideration for imposition of the levy. He has drawn the attention of this Court to the work order dated 15.10.2009 which is for supply of labour. He has also drawn the attention of this Court to the specific observation made by the respondent authorities by taking into consideration the notification dated 20.06.2012 which is extracted herein below:

4.7 Thus, from the above Work Orders I find that the Contracts awarded by the service recipient namely, M/s Simplex Infrastructures Limited were for supplying "manpower" and NOT for execution of work contracts i.e., constructions of road, dam, canals etc and which were specifically exempted vide Para 13 (a) of Notification No. 25/2012-ST dated 20.06.2012, as amended, as contended by the said noticee. Therefore, I am of the considered opinion that the said notice during the period from 2011-12 to 2014-15 had provided taxable service under the service category "Manpower Recruitment & Supply Services" covered under Section 65B (44) of the Finance Act, 1994, as amended and had escaped payment of Service Tax; Education Cess & Secondary & Higher Education Cess in terms of Section 68 of the Finance Act, 1994 and I hold accordingly."

8. He has also submitted that the argument made on behalf of the petitioner in connection with Form 26AS of TDS is not applicable as the same is not the basis of the impugned levy. He has submitted that the competent authority had passed a confirmation order and the present levy is only on the aspect of supply of manpower and the entire value of the contract has not been taken into

consideration. He has also submitted that in any case, the disputes are factual in nature and there is an avenue to prefer an appeal which has not been done by the petitioner.

9. The learned Standing Counsel has also placed the records of the case in original which have been perused.

10. Dr. Todi, the learned counsel has in his rejoinder has fairly accepted the first proposition that the contention regarding violation of the constitutional provision has been settled and therefore he would not press the said ground of challenge. He however submits that the remaining grounds are relevant grounds which require a consideration by this Court.

11. The rival submissions advanced have been duly considered and the materials placed before this Court have been carefully perused.

12. From the materials on record and upon consideration of the submissions, it clearly appears that the work which was entrusted to the petitioner as a sub-contractor consisted of construction of roads, irrigation work as well as works for supply of workforce. It is not disputed regarding the validity and operation of the Notification dated 20.06.2012 of exemption of such service tax from works of construction of road and for irrigation purpose. In fact Clause 13 (a) and Clause 12 (d) are specifically on the aforesaid exemption. This Court has also noticed that under Clause 29 (h), a sub-contractor is also entitled to get the benefit of such exemption. The aspect however which requires consideration is as to whether the work which was entrusted to the petitioner as sub-contractor was only for construction of work of roads and irrigation or for supply of manpower.

13. The materials on record clearly reflect that there were two distinct components of the work, one for construction of roads and irrigation work and the other for the supply of workforce. The impugned order clearly reflects that the notification dated 20.06.2012 was taken into consideration and thereafter, the levy was made. The observations which have been extracted above would clearly reveal that the authority was aware of the exemption provision and had given exemption to that component of the work consisting of construction of roads and irrigation work and it clearly appears that the levy is on the component of supply of workforce.

14. This Court is also of the considered opinion that though the petitioner has emphasized that the impugned levy is not on the aspect of supply of workforce alone, the said argument would be on the realm of factual disputes which cannot be gone into by this Court in exercise of powers under Article 226 of the Constitution of India. As noted above, it is a specific contention on part of the Revenue that the impugned order is an appealable order.

15. It is a settled position of law that a Writ Court in exercise of jurisdiction under Article 226 of the Constitution of India would confine its powers to examine the decision making process only. Further, the present case pertains to

a proceeding of an authority which has given its findings based on the facts. It is trite law that findings of facts are not liable to be interfered with by a Writ Court under its certiorari jurisdiction. The Hon'ble Supreme Court, after discussing the previous case laws on the jurisdiction of a Writ Court qua the writ of certiorari, in the recent decision of Central Council for Research in

Ayurvedic Sciences and Anr. Vs. Bikartan Das & Ors reported in 2023 INSC 733 has laid down as follows:

"49. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

16. In view of the aforesaid discussions and the facts and circumstances, this Court is of the opinion that no case for interference is made out and accordingly the writ petition is dismissed. It is however observed that in case the petitioner wishes, liberty is granted to the petitioner to file an appeal against the impugned Order-in-Original No. 02/DCG (ST LEGACY)/GHY/2017-18 dated 20.11.2017 issued by the Deputy Commissioner, CGST & CE, Commissionerate, Guwahati in

which case the appellate authority would consider and dispose of the appeal, which however has to be done strictly in accordance with law.

17. Writ petition accordingly stands disposed of.

18. The records of the case in original be returned to Shri Keyal, the learned Senior Standing Counsel.