IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3390 of 2023

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M/S Singh Caterers and Vendors a Partnership firm through its one of the partner Rakesh Singh, aged about 49 years, male, son of Kunwar Ranbir Singh, resident of Kunwar House, Plot No. 3Y, Block-3, Road No. 11, Rajendra Nagar, District-Patna (Bihar)-800016.

... ... Petitioner

Versus

1. Directorate General of GST Intelligence (Govt. of India) Dept. of Revenue, through The Joint Director,Delhi Zonal Unit, West Block B, Wing 3, 1st Floor, Sec-1, R.K. Puram, New Delhi-110066.
2. The Joint Commissioner Department of CGST and C Ex, Patna-1, New 3rd Floor, Central Revenue (Annex) Building, Bir Chandra Patel Path, Patna-800001.
3. The Additional Commissioner, Department of CGST and C Ex, Patna-1, New 3rd Floor, Central Revenue (Annex) Building, Bir Chandra Patel Path, Patna-800001.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kejriwal, Advocate Mr. Mohit Agrawal, Advocate Mr. Lokesh Kumar, Advocate Mr. Akash Kumar, Advocate
For the Respondent/s	:	Mr. K.N. Singh, Sr. Advocate (ASGI) Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Shahi Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-02-2025

The petitioner in the present case is seeking the following reliefs:-

> (i) For issuance of writ in the nature of writ or certiorari setting aside and quashing order No. 58/ST/JC/2022, DIN 20221260XU000000ECD9 dated 23.12.2022 passed under the seal and signature of Respondent No. 2 which is purposes order, contrary to law. The order is passed without considering several replies to show causes notices filed by the petitioner, whereby and

where under question of jurisdiction on law point have seriously been raised but without answering the same the order has been passed which is a nullity in eyes of law.

(ii) For issuances of writ in the nature of a writ of mandamus directing the commanding the respondent service tax authority to act within the scope and ambit of the very service tax itself. The order under challenge has been passed without examining the charging section of service tax in terms of section 66B of Chapter V of Finance Act, 1994.

(iii) For issuances of an appropriate writ(s), passed such order(s) writ order as your lordship may deem fit and proper in the facts and circumstances mentioned herein/hereunder above. That the moot questions shall arise in case in hand that whether the charging section of the service act, brings license fee of which the petitioner pays to railways for getting a license of caterers in the Reverse charge Mechanism?"

2. The petitioner in the present case is a partnership firm represented through its partner. The firm was providing catering services to passengers in trains since 1981 to 2005. Once again in the year 2014, it resumed its business and obtained service tax registration on 11.02.2014. In the present writ application, the petitioner firm is aggrieved by and dissatisfied with Order No. 58/ST/JC/2022 DIN 20221260XU000000ECD9 dated 23.12.2022 passed by the Joint Commissioner, Department of CGST & C Ex, Patna (respondent no. 2) which has been enclosed with the writ application as Annexure '1' (hereinafter referred to as the 'impugned order').

3. By the impugned order, the respondent no. 2 has confirmed demand of service tax and has also imposed penalty. The operative part of the order is being reproduced hereunder for a ready reference:-

> "**a)** I confirm the demand of Service Tax amounting to **Rs. 1,38,53,734/-** (Rs. One Crore Thirty Eight Lakh Fifty Three Thousand Seven Hundred and Thirty Four Only) under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.
> **b)** I confirm interest as applicable on the Service Tax amounts mentioned at (a) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.
> **c)** I impose penalty amounting to **Rs. 1,38,53,734/-** (Rs. One Crore Thirty Eight Lakh Fifty Three Thousand Seven Hundred and Thirty Four Only) under Section 78 of the Finance Act, 1994 upon them for suppression of the facts and contravention of statutory provisions as discussed above with intent to evade payment of Service Tax.
> However, in view of clause (ii) of the second proviso to Section 78(1) of the Act, the Noticee may pay the reduced penalty equal to twenty five percent of the amount of Service Tax confirmed and demanded at (a) above provided that the Service Tax confirmed and interest thereon and penalty equal to twenty five percent of the confirmed amount of Service Tax is paid within a period of thirty days from the date of receipt of this order.
> **d)** I drop the penalty under Section 76 of the Finance Act, 1994 for failure to pay Service Tax as proposed in the SCN as once penalty is imposed under Section 78 of the Finance Act, 1994 no penalty can be imposed under Section 76 of the Act as both the Sections are mutually exclusive. Further, I impose penalty amounting to Rs.10,000/- (Rupees ten thousand only) Section 787 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017 for contravention of various statutory provisions as discussed above."

4. Mr. Gautam Kejriwal, learned counsel for the petitioner, has assailed the impugned order on various grounds. It is his submission that the order as contained in Annexure '2' has been passed without examining the charging section of service tax in terms of Section 66B of Chapter V of the Finance Act, 1994 (hereinafter referred to as the 'Act of 1994'). A question has been raised as to whether all the periods covered under the demand Show Cause Notice (in short 'SCN') dated 16.04.2019 is well within statutory limitation period.

Brief Facts of the Case

5. As per the SCN dated 16.04.2019 (Annexure '4'), there was an intelligence report indicating that the petitioner who is registered with the Service Tax, Patna Commissionerate had not paid service tax under Reverse Charge Mechanism (in short 'RCM') on license fee paid to Zonal Railways for catering contracts. An inquiry was initiated and a search proceeding was conducted at Patna and Delhi Office of the petitioner. From the documents collected in course of the search in the premises of the petitioner, it was found that the petitioner was awarded a catering service with effect from 12.02.2014 in Train No. 12391/92 (Shramjivi Express). He was also awarded pantry car contract/provision of catering services subject to fulfillment of

terms and conditions mentioned in the bid documents and with provisional license fee of Rs. 4,62,00,000/- exclusive of all taxes for a period of five years. The Railway requested petitioner to deposit Rs. 1,84,80,000/- towards license fee for the first two years of the contract through demand draft. The petitioner deposited a sum of Rs. 1,84,80,000/- *vide* demand draft dated 07.02.2014. The second installment of Rs. 1,84,80,000/- was also deposited *vide* their letter dated 26.02.2016. The competent authority took note of the terms and conditions of the Master License Agreement (MLAs) received from IRCTC and Southern Railway from the prospective of taxability of the amount paid as consideration by the petitioner. The rights and obligations of the licensee and the rights and obligations of the Railways are duly incorporated under Article 6 and 7 of the MLAs. In its analysis, the competent authority found that certain individual functions that caterer would carry out in ordinary course of their operations such as arranging their own equipment and spaces for carrying out, managing and supervising their business activities are being enabled to them by the Railway who make available the pantry car, including manifold room and washing facilities, for use of the caterer through granting right to use and right to provide additional services, including advertisement and promotion and provide the

caterer with travel passes for providing the service on trains and that Railway principally renders assistance to the caterer that is infrastructural, logistical, operational, marketing or of other kind in lieu of the License Fees.

6. The competent authority was of the view that the Indian Railways provided “Support Services” to the licensee and these services are taxable by virtue of not being covered under Section 66D. It was observed that tax is payable by the licensee on reverse charge basis under Notification No. 30/2012-ST (Sl. No. 6) dated 20.06.2012. During the period 01.07.2012 to 31.03.2016, service tax was not applicable on services provided by the Government subject to certain exceptions and as mentioned in Clause ‘A’ of Section 66D of the Act of 1994. Section 66D provided a negative list comprising of services and perusal thereof would show that the “support services” provided by the Government or a local authority to business entities are one of the services which are excluded from the negative list. Hence, it was observed that the “support services” provided to a business entity by the Government or a local authority was taxable during the period 01.07.2012 to 31.03.2016.

7. The competent authority further observed that since Section 99 of the Act of 1994 makes a special provision for taxable

services provided by Indian Railways and states that notwithstanding anything contained in Section 66, as it stood prior to the 1st day of July, 2012 or in Section 66B, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to 1st day of October, 2012. Thus, it has been observed that “support services” provided to a business entity by the Indian Railways are taxable with effect from 01.10.2012 and in terms of the Notification No. 30/2012-ST dated 20.06.2012, the liability to pay service tax on license fee charged by Indian Railways being Government are on the recipient of the service under RCM. The competent authority found that during the period 01.02.2014 to 30.06.2017, the petitioner paid license fee of Rs. 5,14,06,832/-, Rs. 4,22,35,120/- and Rs. 91,71,712/- total being Rs. 10,28,13,664/- on which a service tax of Rs. 1,38,53,734/- would be payable. In paragraph ‘11’ of the SCN, it was observed that the petitioner had contravened the provisions of the Act of 1994 and rules made thereunder with an intent to evade the payment of service tax. SCN has been issued by the Joint Director calling upon the petitioner to show cause to the adjudicating authority within thirty days of the receipt of the notice as to why the service tax, interest and penalty be not imposed.

8. It appears that the petitioner submitted a reply and an additional submission on 02.09.2022 and 25.09.2022 respectively. Copies of the same have been brought on record as Annexure '6' series to the writ application. In his reply, the petitioner explained the scope of work under the license and the scope of catering services. It was submitted that the licensing is in two parts. One part is to sell food to passengers in trains as per norms and standards of the Railways and the another is renting of base kitchen and other property of the Railways. The SCN referred Section 65B (49) but has not referred and taken up Section 66E as well as Section 65B (44). The SCN was issued without considering the context as given under Section 65B. Relying upon some of the judgments of the Hon'ble Supreme Court, the petitioner sought to interpret Section 65B to submit that the SCN has been issued without considering the context and by taking incomplete set of facts and incomplete set of law.

9. The petitioner took a plea that the SCN was issued without following the guidelines of CBEC *vide* CBENC Master Circular No. 1053/2/2017-CX dated 10.03.2017. The pre-show-cause consultation which was required has not been given to the petitioner. Relying upon the judgment of the Hon'ble Delhi High Court in the case of **Amadeus India Pvt. Ltd. vs. the Principal**

Commissioner, Central Excise, Service Tax and Central Tax, Commissionerate reported in **2019 SCC OnLine Del 8437**, learned counsel for the petitioner has submitted that in this case, a pre-show-cause consultation notice was required. In absence thereof, the SCN is liable to be declared void. It was one of his submissions that in this case, the issue involved is a mere interpretation of law, therefore an extended period of limitation would not be applicable. In any case, penalty would not be imposable in the facts of the present case.

10. It appears that the petitioner was given a personal hearing on 26.09.2022. In the personal hearing, the representatives of the petitioner argued that granting license is not taxable service and no service tax is liable to be paid. The adjudicating authority, however, held that the Indian Railways provided "support services" to the licensee and these services are taxable by virtue of not being covered under Section 66D and service taxes payable on the licensee of reverse charge basis.

11. The adjudicating authority further held that in the era of self-assessment, trust is placed on the assessee to correctly self-assess their tax liability by disclosing the true values in their ST-3 returns and pay the due service tax liability but in this case the noticee did not file correct periodical returns declaring therein his

actual taxable value. As a result of this non-disclosure, the Department remained unaware of such non-payment by the noticee and had the investigation of the noticee not been commenced by the DGGI, such non-payment would not have surfaced. The contention of the noticee is not tenable that except the payment made on 08.08.2016, the entire installment of license fee was time barred. The adjudicating authority has further held that no doubt remains that the noticee have manoeuvred intentionally to suppress the taxable value from the Department with intent to evade service tax and hence, the invocation of the clause of extended time limitation has rightly been done in this case.

12. It has also been held that penalty is imposable on the basis of law operating on the date on which wrongful act is committed. Referring to Section 78 of the Act of 1994, the adjudicating authority held that according to this provision where any service tax has not been levied or paid or has been short levied or short paid by reason of suppression of facts or fraud or collusion or willful mis-statement or contravention of any of the Act or rules made thereunder with intent to evade payment of service tax, Section 78 provides for mandatory penalty and the person is liable to pay such service tax and shall also be liable to pay a penalty in addition to the service tax and interest thereon. The amount of

penalty leviable under the Section is equal to the amount of service tax to be paid under Section 73 of the Act. The adjudicating authority discussed the case laws in the case of **Shiv Network vs. CCE Daman** reported in **2009 (014) STR 680 (Tri. Ahmedabad)** which has held that Section 11 AC of the Central Excise Act which is similar to Section 78 of the Act of 1994 penalty is mandatory unless duty, interest and penalty to the extent of 25 percent have been paid. As regards the interest also, the adjudicating authority held on the strength of Section 68 of the Act of 1994 and the rules made thereunder that whoever fails to credit the tax or any part thereof to the account of Central Government within the prescribed period, shall pay simple interest at such rates fixed by Central Government by notification, for the period by which such crediting or the tax or any part thereof is delayed. Thus, according to the adjudicating authority interest is chargeable from the noticee who has withheld the payment of service tax.

Submissions on behalf of Petitioner

13. Mr. Gautam Kejriwal, learned counsel for the petitioner has assailed the impugned order before this Court mainly on three grounds. His first ground is that no pre-show cause consultation was done in this case which would render the SCN void. According to him, the SCN was issued on 16.04.2019,

therefore, the master circular of the year 2021 would not be applicable in case of the petitioner.

14. His second ground is that the proceeding would be barred by limitation under Section 73(1) of the Act of 1994. The SCN could have been issued within 30 months of the relevant date and the relevant date is the date of filing of the return. According to him, this case would not be covered under proviso to sub-section (1) of Section 73. He has submitted that it is not a case of fraud and willful suppression. Learned counsel relied upon the judgments of the Hon'ble Supreme Court in the case of **C.C., C.E. and S.T. Bangalore and Ors. vs. Northern Operating Systems Private Limited** reported in **(2022) 17 SCC 90**; **Commissioner of Central Excise, Bangalore vs. Karnataka Agro Chemicals** reported in **(2008) 7 SCC 343; Cosmic Dye Chemical vs. Collector of Central Excise, Bombay** reported in **(1995) 6 SCC 117; Collector of Central Excise vs. H.M.M. Limited** reported in **1995 Supp (3) SCC 322**. It is his submission that it is a case of mere non-declaration and non-admission of liability which cannot be put in the category of willful suppression.

15. Thirdly, it has been submitted that the licensing by Railway is not a support service. Section 65 (104C) describes the

nature of support services in business which does not cover the case of the petitioner.

Submissions on behalf of Respondent

16. *Per contra*, Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and C EX has submitted that the present writ application may not be entertained for the reason that the petitioner has got alternative remedy of appeal. It is submitted that Chapter V of the Act of 1994 (as amended) provides proper forum for alternative statutory remedy against the adjudication order passed by any adjudicating authority. Section 85 makes a provision that any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or the Commissioner of Central Excise may appeal to the Commissioner Excise (Appeals). In fact, in the preamble of the order in original dated 23.12.2022 passed by the adjudicating authority, which is impugned in the present appeal, this statutory remedy of appeal has been pointed out to the petitioner but instead of availing the equally efficacious remedy of appeal, the petitioner has invoked the extraordinary writ jurisdiction of this Court. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra and Others vs. Greatship (India) Limited** in

(Civil Appeal No. 4956 of 2022) and similar view taken in the case of **M/s. Kelkar and Kelkar vs. M/s. Hotel Pride Exec. Pvt. Ltd.** in Civil Appeal No. 3479 of 2022.

17. Learned counsel submits that the present case would be covered under proviso to sub-section (1) of Section 173 of the Act of 1994 as it is evident *prima facie* from the SCN as well as the adjudication order that the petitioner firm willfully contravened the statutory provisions under which he was liable to pay service tax on the support services which were being provided by the Indian Railways. Learned counsel submits that the submission of learned counsel for the petitioner that a pre-show-cause consultation notice was required in the present case is equally fallacious. It is submitted that in a case of evasion of tax by willfully contravening the statutory provisions, no pre-show cause consultation notice would be required and it would not be appropriate on the part of the petitioner to submit that the show-cause notice would be rendered void.

18. Learned counsel submits that the challenge to the impugned order on the ground that licencing by Railways is not a support service may not be gone into by this Court at this stage in its writ jurisdiction because it will involve appreciation of the terms and conditions of the MLAs and the nature of the service

being provided by the Railways to the petitioner in connection with its catering services.

Consideration

19. We have heard learned counsel for the petitioner as well as learned Senior Standing counsel for the CGST & C Ex.

20. From the impugned order, it is evident that the adjudicating authority has held that this case would fall in the category of the extended limitation period. Section 73(1) is being reproduced hereunder for a ready reference:-

> "**SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.** —
> **(1)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within [1][[2][thirty months]] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :
> PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —
> (a) fraud; or
> (b) collusion; or
> (c) wilful mis-statement; or
> (d) suppression of facts; or
> (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words [1][[2][thirty months]], the words "five years" had been substituted."

1.Inserted (w.e.f. 10.05.2008) by s. 90 of the FinanceAct, 2008 (18 of 2008).
2. Inserted wef 28.5.2012 by the Finance Act, 2012

21. It is evident on a bare reading of the aforementioned provision that in a case where any service tax has not been paid by contravening any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax by the person chargeable with the service tax or his agent, the provisions of the sub-section shall have effect as if for the words "30 months" the words "5 years" had been substituted. In the present case, the adjudicating authority has held that the petitioner contravened the provisions of the Act and the Rules made thereunder with an intent to evade payment of service tax. So far as the case of **Amadeus India Pvt. Ltd.** (supra) is concerned, in the said case, the Hon'ble Delhi High Court was dealing with a case in which the SCN issued on 4th September, 2018 to the petitioner-company was challenged. The fact of the matter was that on 3rd October, 2018, the petitioner drew attention of respondent to the master circular dated 10th March, 2017 read with an instruction dated 21st December, 2015 issued by the CBEC in terms of which a pre-show-cause notice consultation was mandatory in cases involving demand of duty above Rs. 50 lakhs. A reminder was again sent by the petitioner on 13th November 2018. When no response was received, the writ petition was filed in the High Court of Delhi on 13th December, 2018. It appears that

Hon'ble Delhi High Court not only entertained the writ application but also rejected the contention of the respondent that since the SCN was preceded by a search that was conducted in the business premises of the petitioner and the petitioner also rendered itself liable for penal action 'for suppression of facts and contravention of various statutory provisions with intent to evade payment of due service tax' and other incidental levies, the SCN partakes of the character of an 'offence related' SCN and therefore falls within the exceptions carved out under para 5.0 of the master circular.

22. In the case of **Cosmic Dye Chemical** (*supra*), the matter reached to the Hon'ble Supreme Court only after final adjudication by the Tribunal failed. The Tribunal in the said case had taken a view that regardless of intent, a mere suppression of facts or misstatement in the information statutorily required to be supplied to the Excise authorities attract the larger period of limitation.

23. The Hon'ble Supreme Court did not approve the views of the learned Tribunal and held *inter alia* as under:-

> "It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11-A of the Central Excise and Salt Act, 1944 (hereinafter referred to as the 'Act of 1944') Misstatement or suppression of fact must be wilful." In the said case

> the appellant contended that he thought bona fide that he need not include the value of the Rapidogens in his declaration, for the reason that the said product was fully exempt from duty under Notification No. 180/61 dated 23.11.1961. As a matter of fact, on the date of date of filing of the declaration by the appellant, two High Courts had taken the view that the goods exempted from duty are not includible within the definition of "excisable goods" as defined in clause (*d*) of Section 2 of the Act of 1944. Two other High Courts had taken a contrary view and the fact was that the appellant's factory was in the State of Maharashtra and the Bombay High Court had not taken a view one way or the other. In such circumstance, the contention of the appellant that he was under bona fide impression that he need not mention the value of the Rapidogens manufactured by him in his declarations cannot be called willful.

24. The present case is clearly distinguishable from **Amadeus India Pvt. Ltd.** (*supra*) and **Cosmic Dye Chemical** (*supra*). In the present case, the petitioner did not challenge the 'SCN'. In the personal hearing given to the petitioner, the representatives of the petitioner argued that granting license is not taxable service and no service tax is liable to be paid. The issue of pre-SCN consultation and that the extended period of limitation would not be applicable in the facts of the present case seems to have been given a go-bye. The adjudicating authority has recorded

in paragraph ‘3.1’ of the impugned order that the representatives of the petitioner requested to decide the case on merit.

25. Recently in **CWJC No. 10644 of 2024 Ramnath Prasad vs. Principal Commissioner of CGST and Central Excise and Anr.** decided on 28.01.2025 this Court has while dealing with an identical issue as to whether the case may be brought in the category of fraud or willful misstatement observed in paragraph ‘28’ as under:-

> “**28.** On a bare reading of the judgment of the Hon’ble Supreme Court in the aforementioned case, it appears that what is the requirement to prove ‘fraud’ and ‘collusion’ is the intent to evade duty. How to gather this intention or judge it would remain a question of fact and this issue as to whether it is a case of fraud, or wilful mis-statement, collusion or is falling under any of the clauses (a) to (b) of the proviso to sub-Section (1) of Section 73 may be properly adjudicated by either the Adjudicating authority or the Appellate Authority with reference to the materials on the record. This Court would not usurp the powers of the Appellate Authority. In our considered opinion, this Court sitting under Article 226 of the Constitution of India would refrain itself as a matter of self-restraint in conducting an enquiry as to whether it is a case of fraud or not. It is left open to be considered by Appellate Authority.”

26. So far as the chargeability of service tax on the license granted by the Railways is concerned, it is the contention of learned counsel for the petitioner that licensing by Railways is not a “support service” and Section 65(104c) which defines

"support services of business or commerce" would not cover the case of the petitioner. We would quote Clause (104c) of Section 65 of the Act of 1994 hereunder:-

> "**(104c) support services of business or commerce**" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, Operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. Explanation.—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security; Clause (104c) under Section 2 of the Act of 1994 was inserted by Finance Act, 2005 dated 13.05.2005 with effect from 16.06.2005.

27. The adjudicating authority has held that Indian Railways provide "support services" to the licensee and these licensees are taxable by virtue of not being covered under Section 66D and service tax is payable on the licensee on the reverse charge basis under Notification No. 30/2012 dated 20.06.2012. Support services provided by the Government or a local authority to business entities are one of the services which are excluded

from the negative list. It has further been noticed by the adjudicating authority that from 01.04.2016 changes have been brought by Finance Act, 2015 whereby the words “support services” were substituted by “any service in sub-clause (iv) of Clause A of Section 66D of the Act of 1994. Section 66D provides the negative list of services and under sub-clause (iv) of clause (a) any service other than services covered under Clause (i) to (iii) provided to business entities have been excluded. The adjudicating authority has also relied upon Circular No. 192/02/2016-ST dated 13.04.2016 which provides that service tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.

28. This Court has taken note of the relevant provisions of the Act of 1994 and the circulars which have been discussed by the adjudicating authority in the impugned order.

29. Having taken note of these aspects of the matter, when this Court considers the plea raised on behalf of the respondents, saying that the writ application may not be entertained as the petitioner has not availed the statutory remedy of appeal, this Court finds that in **CWJC No. 4541 of 2024 (M/s Mangalmurti Constructions vs. The Union of India and others)**, a learned coordinate Bench relegated the petitioner to the

statutory remedy of appeal on finding that the issue as to chargeability of service tax would depend upon construction of the agreement in the said case. In the case of **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Others** reported in **2023 SCC OnLine SC 95**, the Hon'ble Supreme Court observed *inter alia* in paragraph '4' as under:-

> "**4.** …. It is axiomatic that the High Courts (bearing in mind the facts of each particular case)
> have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable

> of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

30. In our considered opinion, all the issues which have been raised by learned counsel for the petitioner in the present writ application would essentially involve appreciation of facts emerging from the records which may be duly gone into by the appellate authority. It is not the case of the petitioner that he has no equally efficacious remedy, we would, therefore, refrain from exercising our extra-ordinary writ jurisdiction at this stage.

31. The petitioner, if so advised, may avail statutory remedy of appeal. If an appeal is filed within a period of eight weeks from today, the appellate authority i.e. Commissioner (Appeal), CGST, and C Ex shall consider the issue of limitation, keeping in view the fact that the petitioner was advised to approach this Court in its writ jurisdiction and the writ application

was pending consideration since the date of its presentation i.e. 14.02.2023.

32. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Rishi/-

AFR/NAFR	
CAV DATE	11.02.2025
Uploading Date	14.02.2025
Transmission Date	