IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 13TH DAY OF NOVEMBER 2023 / 22ND KARTHIKA, 1945

WP(C) NO.8448 OF 2021

PETITIONER :-

M/s.GAIAGEN TECHNOLOGIES PRIVATE LIMITED
(EARLIER KNOWN AS PEST CONTROL INDIA PRIVATE
LIMITED), HAVING CORPORATE OFFICE AT 5TH FLOOR,
JAGDAMBA HOUSE, PERU BAUG, GOREGAON EAST,
MUMBAI-400 063, REPRESENTED BY
ASSISTANT GENERAL MANAGER MR.AMOGH PRADEEP AIDOOR,
AGED 29 YEARS, 23, SHREE VIDYADHIRAJ, PLOT 235/8,
SECTOR 3, CHARKOP, KANDIVIL WEST, MUMBAI-400 067.

BY ADVS.
SRI.JOSE JACOB
SRI.JAZIL DEV FERDINANTO
SRI.BHARAT RAICHANDANI

RESPONDENTS :-

1 STATE OF KERALA REPRESENTED BY THE SECRETARY,
TAXES (A) DEPARTMENT, GOVT. OF KERALA,
SECRETARIAT, TRIVANDRUM-695 001.

2 ASSISTANT COMMISSIONER,
SPECIAL CIRCLE-1, SGST COMPLEX, PERUMANOOR P.O,
ERNAKULAM, KOCHI-682 015.

3 THE REGISTRAR,
KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,
6TH FLOOR, SGST DEPARTMENT COMPLEX,
THEVARA, KOCHI-682 015.

4 UNION OF INDIA,
REPRESENTED BY SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI-110 001.

5 COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE,
COCHIN COMMISSIONERATE, CENTRAL REVENUE BUILDING,
I.S.PRESS ROAD, KOCHI-682 018.

6 DEPUTY COMMISSIONER (REFUND) OF CGST,
MUMBAI WEST, 1ST FLOOR,

SHREE MAHAVIR JAIN VIDYALAYA, C.D.BARFIWALA MARG, JUHU LANE, ANDHERI (WEST), MUMBAI – 400 058.

7 STATE TAX OFFICER (WORKS CONTRACT), JOINT COMMISSIONER, STATE GOODS AND SERVICE TAX DEPARTMENT, SGST COMPLEX, PERUMANOOR, ERNAKULAM.

8 DEPUTY COMMISSIONER, SPECIAL CIRCLE 1, STATE GST DEPARTMENT, ERNAKULAM.

BY ADVS.
SRI.MOHAMMED RAFIQ, SPL.GP
SRI.T.V.VINU
SMT.THANUJA ROSHAN
SRI.SREELAL N.WARRIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.07.2023, ALONG WITH WP(C).19432/2021, THE COURT ON 13.11.2023 DELIVERED THE FOLLOWING:

'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 13TH DAY OF NOVEMBER 2023 / 22ND KARTHIKA, 1945

WP(C) NO.19432 OF 2021

PETITIONER :-

M/s.GAIAGEN TECHNOLOGIES PRIVATE LIMITED
(EARLIER KNOWN AS PEST CONTROL INDIA PRIVATE
LIMITED) HAVING CORPORATE OFFICE AT 5TH FLOOR,
JAGDAMBA HOUSE, PERU BAUG, GOREGAON EAST,
MUMBAI - 400 063 REPRESENTED BY
ASSISTANT GENERAL MANAGER MR.AMOGH PRADEEP AIDOOR,
AGED 29 YEARS, 23, SHREE VIDYADHIRAJ, PLOT 235/8,
SECTOR 3, CHARKOP, KANDIVIL WEST, MUMBAI-400 067.

BY ADVS.
JOSE JACOB
BHARAT RAICHANDANI
JAZIL DEV FERDINANTO

RESPONDENTS :-

1 STATE OF KERALA REPRESENTED BY THE SECRETARY,
TAXES(A) DEPARTMENT, GOVT. OF KERALA,
SECRETARIAT, TRIVANDRUM - 695 001.

2 ASSISTANT COMMISSIONER
SPECIAL CIRCLE-1, SGST COMPLEX, PERUMANOOR P.O.,
ERNAKULAM, KOCHI - 682 015.

3 KERALA VALUE ADDED TAX APPELLATE TRIBUNAL
REPRESENTED BY THE REGISTRAR, 6TH FLOOR,
SGST DEPARTMENT COMPLEX, THEVARA, KOCHI - 682 015.

4 UNION OF INDIA REPRESENTED BY SECRETARY,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI - 110 001.

5 COMMISSIONER OF CENTRAL TAX AND CENTRAL EDXCISE
COCHIN COMMISSIONERATE, CENTRAL REVENUE BUILDING,
I.S.PRESS ROAD, KOCHI - 682 018.

6 STATE TAX OFFICER (WORKS CONTRACT)
JOINT COMMISSIONER,
STATE GOODS AND SERVICE TAX DEPARTMENT,
SGST COMPLEX, PERUMANOOR, ERNAKULAM - 682 015.

7 DEPUTY COMMISSIONER
SPECIAL CIRCLE 1, STATE GST DEPARTMENT,
ERNAKULAM - 682 015.

BY ADVS.
SRI.SHYAMDEEP S.SHENOY, CGC
SRI.T.V.VINU
SMT.THANUJA ROSHAN
SRI.SREELAL N.WARRIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26.07.2023, ALONG WITH WP(C).8448/2021, THE COURT ON 13.11.2023 DELIVERED THE FOLLOWING:

'CR'

ANU SIVARAMAN, J.

W.P.(C) Nos.8448 & 19432 of 2021

Dated this the 13th day of November, 2023

JUDGMENT

W.P.(C) No.8448/2021 challenges Ext.P5 order dated 5.3.2019, by which, the Kerala Value Added Tax Appellate Tribunal (for short, 'the KVAT Appellate Tribunal') partly allowed the appeals filed by the State and modified the directions of the First Appellate Authority and directed the Assessing Authority to complete the assessment afresh as indicated in paragraphs 9 and 10, taking note of the decision of the Apex Court in **State of Gujarat** v. **Bharat Pest Control** [2018-TIOL-310-SC]. There is a further prayer for a direction to respondents 4 and 5 to deposit the amount of service tax erroneously collected from the petitioner to the 1st respondent to discharge the VAT liability confirmed by Ext.P5 order. Challenge is also raised to Ext.P11 order of the 6th respondent rejecting the request for refund of the service tax paid and Ext.P14 notice issued by the 7th respondent under Section 25(1) of the Kerala Value Added Tax Act (for short, 'the KVAT Act'). The assessment years in question in the said writ petition are from 2008-'09 to 2012-'13.

2. The prayer in W.P.(C) No.19432/2021 is to quash Ext.P13 order of the 6th respondent dated 5.7.2021, by which, the annual returns filed by the petitioner for the financial year 2015-'16 claiming exemption on receipts of service contracts have been rejected and resorted to assessment under Section 25(1) of the KVAT Act.

3. Heard Sri.Bharat Raichandani, the learned counsel appearing for the petitioner, Sri.Sreelal N. Warrier, the learned Standing Counsel appearing for the Service Tax Authorities and Sri.Mohammed Rafiq, the learned Special Government Pleader appearing for the State Revenue.

4. The learned counsel appearing for the petitioner submits that the question whether the business of pest control undertaken by the petitioner would fall within the meaning of a service contract or not is a pure question of fact which has to be decided on the basis of the specific terms of the contract entered into between the parties and that the blind reliance placed by the Appellate Tribunal on a decision of the Apex Court rendered in different fact circumstances is completely erroneous and unjustifiable. It is submitted that a transaction cannot, at the same time, be a service contract and a works contract. It is

submitted that in case there is no transfer of property in the nature of goods or otherwise and where all that is intended and executed is the performance of a service *per se,* there can be no element of sale involved and the imposition of VAT on such a transaction would be completely erroneous. In the alternative, it is argued that the petitioner, on the basis of it's conviction that the transaction in question is a service contract had paid service tax in respect of the entire turn over for all the periods in question and that in case it is found that the contract was a works contract, it is for the Service Tax Authorities to pay the amount found due as VAT to the VAT Authorities in Kerala since in that case, the collection of service tax from the petitioner would be obviously erroneous. It is contended that Article 265 of the Constitution of India provides that no tax can be collected without authority of law. It is submitted, relying on the decisions in **Godfrey Phillips India Ltd. & anr.** v. **State of U.P. & ors.** [2005-TIOL-10-SC-LT-CB] and **Imagic Creative Pvt. Ltd.** v. **Commissioner of Commercial Taxes** [2008 (9) S.T.R. 337 (S.C.)], that service tax and VAT are mutually exclusive and once a transaction is subjected to service tax, no VAT can be levied on the same element of the same transaction. It is further contended that in

case it is found that the transaction in question is a works contract, then no service tax would have been payable on the transaction and that the Service Tax Authorities cannot, in those circumstances, retain the amounts wrongly paid by the petitioner as service tax, which then become unauthorised collections without authority of law. The decisions in **U.P. Pollution Control Board and Ors.** v. **Kanoria Industrial Ltd. and Ors.** [MANU/SC/ 1449/2001], **Malabar Gold Pvt. Ltd.** v. **Commercial Tax Officer, Kozhikode** [2013 (32) S.T.R. 3 (Ker.)], **Kerala Classified Hotels and Resorts Association and ors.** v. **Union of India and ors.** [2013-TIOL-533-HC-Kerala-ST] and **M/s.Murugan Agencies** v. **State of Kerala and Ors.** [2016-TIOL-611-HC-Kerala-VAT] are relied on in support of the said contention. It is contended that the decisions in **Union of India (UOI) and ors.** v. **K.G. Khosla & Co. Ltd. and ors.** [MANU/SC/0434/1979] and **Bharat Heavy Electrical Limited and ors.** v. **Union of India (UOI) and ors.** [MANU/SC/ 0467/1996] are authority on the point that amounts wrongly paid as tax can be directed to be paid to the authorities who are legally entitled to tax.

5. It is contended that the petitioner is admittedly providing services of pest control. Ext.P1 is a model contract entered into by the petitioner with its customers. It is submitted that the very specific clauses of the contract will show that the contract is a service contract simplicitor and that there is no transfer of property in the form of goods or otherwise involved in the said contract. The decisions in **Enviro Chemicals** v. **State of Kerala** [MANU/KE/ 0358/2011], **M/s.Idea Cellular Ltd.** v. **Union of India and others** [2015-TIOL-896-HC-P&H-VAT] and **Builders Assn. of India** v. **Union of India** [(1989) 2 SCC 645] are sought to be relied on to contend that the question as to whether pest control was a service contract or a works contract was far from conclusively decided and that in **Pest Control India Ltd.** v. **The Union of India (UOI) and Ors.** [MANU/BH/0324/1989] it had been held that the contract being a service contract, only service tax is payable. It is submitted that the judgment rendered by the Apex Court in **State of Gujarat** v. **Bharat Pest Control** cannot be relied on blindly by the Appellate Tribunal to contend that the services offered by the petitioner would attract VAT since the specific language of the contract has not even been considered in a cursory manner by the Appellate Tribunal to reach such a

conclusion. It is, therefore, contended that the issue requires a reconsideration at the hands of the Tribunal. Alternatively it is contended that even if it is found that the transaction that the petitioner had entered into was a works contract or had an element of sale of the chemicals used involved, then also, since the petitioner had paid the entire amount of service tax for the relevant periods, the petitioner cannot be required to pay tax all over again and that the Service Tax Authorities should be directed to meet the demand raised by the VAT Authorities.

6. The learned counsel places reliance on several judgments of the Apex Court in support of his contentions. Apart from the decisions referred to earlier, the learned counsel for the petitioner would also rely on the decisions of the Apex Court in **Associated Cement Companies Ltd.** v. **Commissioner of Customs** [2001 (128) E.L.T. 21 (S.C.)], **Harbanslal Sahnia and anr.** v. **Indian Oil Corpn Ltd** [(2003) 2 SCC 107], **Bharat Sanchar Nigam Ltd.** v. **Union of India** [2006 (2) S.T.R. 161 (S.C.)] and **State of Gujarat** v. **Bharat Pest Control** [2018-TIOL-310-SC-VAT].

7. The learned counsel for the petitioner also places reliance on the decisions of the Bombay High Court in **Hindustan**

Cocoa Products v. **UOI** [1994 (74) ELT 525 (Bom)], **Inhouse Productions Ltd** v. **CST** [2017 (3) G.S.T.L. 97 (Bom)], **Bharat Heavy Electricals Ltd.** v. **State of Maharashtra** [2018 (13) G.S.T.L. 292 (Bom.)], **Parijat Construction** v. **CCE** [2018 (359) ELT 113 (Bom)], the decision of the Gujarat High Court in **Union of India** v. **Alstom India Limited** [2014 (301) ELT 446 (Guj.)] as also the decision of the Karnataka High Court in **Commissioner** v. **KVR Construction** [2012 (26) STR 195 (Kar.)].

8. The learned counsel appearing for the Revenue, on the other hand, submits that the contention of the petitioner that the transaction is a service contract cannot be accepted in the light of the concluded judgments of the Apex Court in identical situations. It is contended that a pest control contract cannot be carried out without the consumption of pesticides and chemicals and that it has been clearly held that where such pesticides or chemicals are used for the purpose of pest control in a contract, there is an element of sale involved and that the contract would, therefore, fall specifically within the four corners of a works contract. It is contended that in such circumstances, the petitioner was duty bound to meet the demand for VAT which has been raised on the basis of the directions issued by the Appellate Tribunal. It is

contended that there is no distinction with regard to the contract entered into by the petitioner, a model of which is produced as Ext.P1 and the contracts which have been subjected to consideration by the Tribunals and Constitutional Courts in the decisions relied on by the Appellate Tribunal. It is further contended that having raised a demand in accordance with the provisions of a valid enactment, the VAT authorities cannot be asked to approach the Service Tax Authorities to whom the petitioner has made payments voluntarily for the refund or adjustment of such amounts.

9. The learned counsel would place reliance on the decisions of the Apex Court in **Genpact India Private Limited** v. **Deputy Commissioner of Income Tax** [2019 SCC Online SC 1500], **Commissioner of Income Tax and ors.** v. **Chhabil Dass Agarwal** [MANU/SC/0802/2013], **Titaghur Paper Mills Co. Ltd. and another** v. **State of Orissa & others** [MANU/SC/ 0317/1983], **Imagic Creative (P) Ltd.** v. **Commissioner of Commercial Taxes and others** [(2008) 2 SCC 614], **Larsen and Toubro Limited and another** v. **State of Karnataka and another** [(2014) 1 SCC 708], **Kone Elevator India Private Limited** v. **State of Tamil Nadu** [(2014) 7 SCC 1], **State of**

Gujarat v. **Bharat Pest Control** [(2018) 14 SCC 685] and **Commissioner of Service Tax, Delhi** v. **Quick Heal Technologies Limited** [(2023) 5 SCC 469]. The learned counsel also places reliance on a decision of the Gujarat High Court in **State of Gujarat** v. **Bharat Pest Control** [(2017) 97 VST 50] as also the decision of a Full Bench of this Court in **State of Kerala** v. **Bharathi Airtel Limited** [2018 (4) KLT 1011 (F.B.)]**.**

10. The learned counsel appearing for the Service Tax Authorities would draw my attention to Section 11B of the Central Excise Act read with the Finance Act, 1994 and would contend that the question of refund of service tax already paid would arise only in the circumstances as specifically provided under the provisions of the said Act. It is further contended that since no claim for refund had been submitted under the provisions of the Central Excise Act within the time provided, such claim could not be entertained under any circumstances. It is further stated that the petitioner's refund claim is also hit by the doctrine of unjust enrichment in as much as the tax incidents has been passed on to the petitioner's customers. All these aspects are clearly set forth in the order rejecting the claim for refund. It is submitted that the petitioner having paid the service tax voluntarily and not having

challenged the levy of service tax in any proceedings till this day cannot be heard to contend that the entire service tax paid by it or even the proportionate amount as has been demanded by the VAT authorities are to be paid by the Service Tax Authority to the VAT authorities. It is submitted that there is absolutely no provision of law enabling such an exercise.

11. Having considered the contentions on all sides and having gone through the decisions referred to in detail, I find that the imposition of any tax has to be with the authority of law. In the instant case, the petitioner apparently proceeded on the assumption that the activity carried out by it was a service contract and proceeded to remit service tax in respect of its entire turn over. However, the question whether a pest control contract is a works contract by reason of there being an element of sale of the materials used for pest control was considered by the various High Courts as well as the Apex Court. It is an admitted fact that the said question has found a quietus in as much as the Apex Court has held that the contract of pest control has an element of sale of chemicals involved and is, therefore, a works contract and is amenable to tax as such. The Appellate Tribunal has directed the reworking of the assessments on the basis of the findings of

the Apex Court. The contention raised by the petitioner is that its contract is different from the contracts which have been considered by the Apex Court and that the said question will have to be considered by the Assessing Authority.

12. I find that the said contention merits consideration. Even going by the decision of the Appellate Tribunal, the petitioner had been relegated to the Assessing Authority for passing an order of assessment in the light of the decision of the Apex Court. Nothing precludes the consideration of the contentions of the assessee at the hands of the Assessing Authority. I, therefore, find that the Assessing Authority is duty bound to consider the contentions of the assessee on facts before proceeding with the modification of the assessment as directed in Ext.P5. The order of assessment which was thereafter rendered and is produced as Ext.P13 in W.P.(C) No.19432/2021 has also not been given effect to due to the orders of stay passed by this Court. In view of the discussion as above, I am of the opinion that the assessment will have to be carried out after considering the contentions of the petitioner on facts as well.

13. The second contention raised by the petitioner is with regard to adjustment of the amount paid as service tax. The

learned counsel for the petitioner would vehemently contend that in case it is found that there is any amount payable by the petitioner as VAT for the period when it has already remitted service tax in respect of its entire turn over, then, the service tax authorities should be directed to make the payment.

14. Reliance is sought to be placed on a decision of the High Court of Punjab and Haryana in **M/s.Idea Cellular Ltd.** v. **Union of India and others** [2015-TIOL-896-HC-P&H-VAT]. It is submitted that after considering all the decisions on the point, the Punjab and Haryana High Court held that the general rule that a high prerogative writ shall not issue where a statute prescribes a complete procedure for redressal of grievances must admit to certain exceptions, particularly when the collection of tax is without authority of law. The Supreme Court having held that where levy and collection of tax/cess is unconstitutional or without authority of law, a writ seeking refund of tax/cess collected without authority of law was held to be maintainable. After noticing that the Apex Court had also held that a Civil Writ Petition solely praying for refund of money against the State by a writ of mandamus is not to be entertained, the Bench went on to hold that since the collection of money was itself without authority

of law, there is no good reason to deny relief of refund to citizens in such cases. In the said judgment, the Punjab and Haryana High Court had finally decided as follows :-

> "25. The argument that refund of this amount would amount to unjust enrichment of the petitioner is without foundation in fact or in law. The Union of India has raised a demand for service tax for the period for which the State of Haryana has levied and collected VAT. If the petitioner is called upon to pay VAT and service tax, it would be the case of double taxation. Even otherwise all that we propose to do is to direct the State of Haryana to forward this amount to the Union of India.
>
> 26. Having held as above and taking into consideration that the transaction is subject to service tax, we allow the writ petition by holding that :-
>
> (a) the assessment orders dated 22.2.2006, 26.3.2008 and 22.2.2006 (Annexures P-3A, P-3B and P-3C) are a nullity;
>
> (b) the State of Haryana shall transfer the amount of VAT collected from the petitioner to the Service Tax Department of the Union of India;
>
> (c) the amount of VAT transferred by the State of Haryana to the Service Tax Department of Union of India shall not be deemed to be a full and final discharge of the petitioner's liability to pay service tax, which shall depend upon adjudication by the authority concerned."

Relying on the said judgment as well as the other authorities on which reliance is placed, the learned counsel appearing for the

petitioner vehemently argues that the collection of service tax by the Service Tax Authorities having been found to be illegal and unsustainable, it is now for such authorities who have collected tax well in excess of their entitlement to make the adjustments by meeting the demands raised under the VAT Act.

15. Having considered the said contention, I notice that the said contention has been specifically dealt with by the Apex Court in **Mafatlal Industries Ltd. and others** v. **Union of India and others** [(1997) 5 SCC 536]. The Apex Court clearly held in paragraph 108, Part IV of the judgment which forms the conclusion of the Bench as follows :-

> "(i) Where a refund of tax/duty is claimed on the ground that it has been collected from the petitioner/plaintiff – whether before commencement of the Central Excise and Customs Laws (Amendment) Act, 1991 or thereafter – by misinterpreting or misapplying the provisions of the Central Excise and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 read with Customs Tariff Act or by misinterpreting or misapplying any of the rules, regulations or notifications under the said enactments, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 – and this Court under Article 32 - cannot be circumscribed by the provisions of the said enactments,

they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of and in accordance with the provisions of Section 11B. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.

The said enactments including Section 11B of the Central Excise and Salt Act and Section 27 of the Customs Act do constitute "law" within the meaning of Article 265 of the Constitution of India and hence, any tax collected, retained or not refunded in accordance with the said provisions must be held to be collected, retained or not refunded, as the case may be, under the authority of law. Both the enactments are self-contained enactments providing for levy, assessment, recovery and refund of duties imposed thereunder. Section 11B of the Central Excise and Salt Act and Section 27 of the Customs Act, both before and after the 1991 (Amendment) Act are constitutionally valid and have to be followed and given effect to. Section 72 of the Contract Act has no application to such a claim of refund and cannot form a basis for maintaining a suit or a writ petition. All refund claims except those mentioned under proposition (ii) below have to be and must be filed and adjudicated under the provisions of the Central Excise and Salt Act or the Customs Act, as the case may be."

16. It is pertinent here to note that the exception as mentioned in proposition (ii) was with regard to refund claimed on the ground that the provision of the Act under which it is levied is or has been held to be unconstitutional. In such case, the claim

being a claim outside the purview of the enactment can be made either by way of a suit or by way of a writ petition. Further, it was held that a claim for refund whether under the provisions of the Act or otherwise, can succeed only if the petitioner alleges and establishes that he has not passed on the burden of duty to another person/persons. It was also held that it is not open to any person to make a refund claim on the basis of a decision of a court or tribunal rendered in the case of another person. He cannot also claim that the decision of the court/tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person whether a manufacturer or importer must fight his own battle and must succeed or fail in such proceedings. Once the assessment of levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person's case. The said proposition had the consensus of the Bench except for the dissent of Justice A.M. Ahmadi and Justice Suhas C. Sen.

17. Later in **Priya Blue Industries Ltd.** v. **Commissioner of Customs (Preventive)** [(2005) 10 SCC 433] the issue of refund was considered and it was held that an assessment order continues to be effective unless reviewed or modified in appeal and so long as an assessment order remains without any such review or modification, no claim for refund would be maintainable. The decision in **CCE** v. **Flock (India) (P) Ltd.** [(2000) 6 SCC 650] was also relied on in support of the contention that in the absence of an appeal having been filed, no refund claim could be made.

18. In the instant case, the petitioner had made the payment of the service tax for the periods in question voluntarily and had never challenged the authority of the Service Tax Authorities. It is also not in dispute before me that the levy was under the provisions of an enactment which the petitioner still maintains is applicable to the transaction in question. It is only at a belated stage when the VAT authorities raised a demand on the basis of the law as decided by the Apex Court that the petitioner, for the first time, raises a claim for refund of the service tax paid or seeks payment of the VAT demanded by the Service Tax Authorities. The petitioner who had volunteered to pay the service tax and never challenged the said levy cannot attempt to

get over the provisions of the statute providing for the conditions which have to be satisfied for raising such a demand. The instant case is not one where the levy of service tax was under any provision found to be constitutionally invalid. The levy was under the provisions of a valid statute and the petitioner had raised no objection or appeal as against the assessment.

19. In the writ petition, I notice that there is no specific contention raised by the petitioner that the burden of the service tax that he had paid to the appropriate authorities had not been passed on to the end customer. In the absence of such a specific contention, I am of the opinion that the petitioner cannot place any reliance on the doctrine of unjust enrichment as against the revenue.

In the light of the binding decisions of the Apex Court on the question of refund of tax paid with authority of law, I am not persuaded to follow the judgment of the High Court of Punjab and Haryana. I am of the opinion that the claim of the petitioner that the Service Tax Authorities must be directed to meet the demand of VAT, if any, found payable by the petitioner cannot be accepted under the circumstances. The said contention is devoid of merits. The prayer to that effect is declined.

W.P.(C) No.8448/2021 is ordered upholding Exts.P5 and P11 orders. However, in the light of the discussion at paragraph 12 of this judgment, Ext.P14 notice produced along with W.P.(C) No.8448/2021 and Ext.P13 order dated 5.7.2021 produced along with W.P.(C) No.19432/2021 are set aside. The Assessing Authority shall consider the issue afresh with notice to the petitioner with regard to the nature of the contracts entered into by the petitioner with its customers and pass a reasoned order in continuation of Ext.P5. It is made clear that further assessments can be made and demands raised on the basis of the findings of the Assessing Authority. All other prayers are declined.

Sd/-
ANU SIVARAMAN
JUDGE

Jvt/18.9.2023

APPENDIX OF WP(C) 8448/2021

PETITIONER EXHIBITS :-

EXHIBIT P1	TRUE COPY OF A SAMPLE CONTRACT/ORDER.
EXHIBIT P2	TRUE COPY OF THE SERVICE TAX REGISTRATION CERTIFICATE.
EXHIBIT P3	TRUE COPY OF THE SERVICE TAX RETURNS RELATING TO THE PERIOD.
EXHIBIT P4	TRUE COPY OF THE ORDER.
EXHIBIT P5	TRUE COPY OF THE ORDER.
EXHIBIT P6	TRUE COPY OF THE WRIT PETITION (WITHOUT ENCLOSURES)
EXHIBIT P7	TRUE COPY OF THE ORDER.
EXHIBIT P8	COPY OF THE CLAIM FOR REFUND APPLICATION ALONG WITH ALL THE ANNEXURES.
EXHIBIT P9	TRUE COPY OF THE SHOW CAUSE NOTICE NO.CGST/MUM(W) /REFUND /FOR R/GAIAGEN/099/2019-20
EXHIBIT P10	TRUE COPY OF THE REPLY.
EXHIBIT P11	TRUE COPY OF THE ORDER IN ORIGINAL.
EXHIBIT P12	TRUE COPY OF THE WRIT PETITION (WITHOUT ENCLOSURES) FILED BEFORE THE HON'BLE SUPREME COURT.
EXHIBIT P13	TRUE TYPED COPY OF THE ORDER.
EXHIBIT P14	COPY OF THE NOTICE.

APPENDIX OF WP(C) 19432/2021

PETITIONER EXHIBITS :-

Exhibit P1	TRUE COPY OF A SAMPLE CONTRACT NO.P126/CO/16/000656 DATE 12/08/2015.
Exhibit P2	TRUE COPY OF THE SERVICE TAX REGISTRATION CERTIFICATE.
Exhibit P3	TRUE COPY OF THE SERVICE TAX RETURNS RELATING TO THE FY 2010-2011 DATED 24/04/2012.
Exhibit P4	TRUE COPY OF ORDER DATED 18/01/2019.
Exhibit P5	TRUE COPY OF THE ORDER DATED 05/03/2019.
Exhibit P6	TRUE COPY OF THE ORDER DATED 23/09/2019.
Exhibit P7	TRUE COPY OF THE SHOW CAUSE NOTICE NO.CGST/MUM(W)/REFUND/FOR R/GAIAGEN/099/2019-20 DATED 29/01/2020.
Exhibit P8	TRUE COPY OF REPLY DATED 17/03/2020.
Exhibit P9	TRUE COPY OF THE ORDER-IN-ORIGINAL DATED 10/06/2020.
Exhibit P10	TRUE TYPED COPY OF THE ORDER DATED 15/02/2021.
Exhibit P11	TRUE COPY OF THE WRIT PETITION DATED 26/03/2021 (WITHOUT EXHIBITS).
Exhibit P12	TRUE COPY OF THE ORDER DATED 22/07/2021.
Exhibit P13	TRUE COPY OF THE ASSESSMENT ORDER DATED 05/07/2021.
Exhibit P14	TRUE COPY OF THE JUDGMENT DATED 14/09/1989.