



NC: 2023:KHC:45982
WP No. 44252 of 2015
C/W WP No. 48639 of 2015
WP No. 48640 of 2015

...PETITIONER

(BY SRI. JAYAKUMAR S. PATIL., SENIOR COUNSEL FOR
SRI. A. MAHAMMED TAHIR., ADVOCATE)

AND:

BRUHATH BANGALORE MAHANAGARA PALIKE

...RESPONDENT

(BY SRI. B.V. KRISHNA., ADVOCATE ON BEHALF OF
SRI. S.N. PRASHANTH CHANDRA., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING ORDER NO. KA.A/KEN.KA/C3/P.R/51/2006-07 DATED 19.02.2013 PASSED BY THE RESPONDENT VIDE ANNEXURE-K

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 10.11.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner in W.P.No.44252/2015 is before this

Court seeking for the following reliefs:

- a. *Issue a writ in the nature of certiorari quashing order No. Ka.A/Ken.Ka/C3/P.R/51/2006-07 dated 19.02.2013 passed by the Respondent at Vide Annexure-K.*



- b. *Issue a Writ in nature of mandamus directing the respondent to pay Rs.94,23,281/- along with future interest and penalty as and when imposed by Commissioner of service Tax to the petitioner.*
- c. *Issue a writ in the nature of mandamus directing the respondent to consider the representations dated 20.07.2015 at vide Annexure-P.*
- d. *Pass such other writ, order or direction that this Hon'ble court deems fit to pass in the circumstances of the case.*

2. The petitioner in W.P. No.48639/2015 is before this

Court seeking for the following reliefs:

- a. *Issue a writ in the nature of mandamus directing the Respondent to consider the representations dated 20.07.2015 at vide Annexure-H.*
- b. *Issue a writ in nature of mandamus directing the Respondent to pay Rs.46,00,108/- along with present and future interest and penalty as and when imposed by Commissioner of Service Tax.*
- c. *Pass such other writ, order or direction that this Hon'ble Court deems fit to pass in the circumstances of the case.*

3. The petitioner in W.P. No.48640/2015 is before this

Court seeking for the following reliefs:

- a. *Issue a writ in the nature of certiorari quashing order No. Ka.A/Ken.Ka/C3/P.R/51/2006-07 dated*



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19.02.2013 passed by the Respondent vide Annexure-K

- b. Issue a writ in nature of mandamus directing the respondent to consider the representations dated 20.07.2015 at vide Annexure-P.*
- c. Issue a writ in the nature of mandamus directing the respondent to pay Rs.24,63,228/- along with present and future interest and penalty as and when imposes by Commissioner of Service Tax.*
- d. Pass such other writ, order or direction that this Hon'ble Court deems fit to pass in the circumstances of the case.*

4. The respondent – Corporation passed a resolution to introduce a Scheme to Start Computer Educational Institutes in Bangalore Mahanagara Palike area to provide free computer education to the persons belonging to economically weaker sections of the Society. Pursuant thereto, the Corporation being satisfied with the qualification of the petitioner had entered into agreements in respect of different Assembly Constituencies for a period of three years to provide the above services and consequently, issued a work order.



5. The petitioners provided the services without any complaint from the respondent as regards which the petitioners were paid a sum of Rs.3,500/- per candidate. The respondent – Corporation not being regular in payment of monies, the petitioners had to follow up for such payment. The petitioners had also called upon the respondent to make payment of service tax due on the amount to be paid by the respondent to the petitioner. When no action was taken, the petitioner in W.P.No.44252/2015 and the petitioner in W.P.No.48640/2015 filed W.P.Nos.9749-50/2012 for a mandamus seeking direction to the respondent to consider the representation which came to be allowed by way of order dated 17.07.2012.
6. Pursuant thereto, the respondent released the balance amount, however, did not make the payment of service tax amount. Despite the petitioners having brought to the notice of the respondent that



the petitioners have made part payment of service tax amount, the respondent having refused to pay the service tax on the ground that the respondent had received legal advice/legal opinion that respondent is not liable to make payment of service tax.

7. The petitioners having only made payment of partial amount due to service tax, the Commissioner of Service Tax issued show cause notices calling upon the petitioners to make payment of service tax due which the petitioners have challenged by depositing the requisite amounts. This aspect was also brought to the knowledge of the respondent and the respondent was called upon to make payment of the amounts. The same not having been paid but the respondent having taken up the contention in W.P.No.44252/2015 and in W.P.No.48640/2015 vide its letter dated 19.02.2023 vide Annexure-K that no such amounts are due, the petitioners in



W.P.No.44252/2015 and the petitioner in W.P.No.48640/2015 are before this Court seeking for the aforesaid reliefs. The petitioner in W.P.No.48639/2015 is before this Court seeking for a mandamus as aforementioned.

8. Sri.Jayakumar S.Patil, learned Senior counsel for the petitioners would submit that:

8.1. The petitioners have rendered services to the students on behalf of the Corporation, no amounts having been collected from the students, the payment towards such services has been made by the Corporation.

8.2. The petitioners being a service provider and the Corporation being the service availer inasmuch as the Corporation represents the students, it is bounden duty on part of the Corporation to make payment of service tax and it is for this reason that the service tax authorities have



also initiated proceedings against the petitioners in which proceedings the petitioners have been unfortunately made to suffer on account of the inaction and/or illegal stand on part of the Corporation. On the above grounds, he submits that the Writ Petitions are required to be allowed.

9. Sri.B.V.Krishna, learned counsel for the respondent-Corporation would however contend that:

9.1. the respondent – Corporation is not liable to make payment of any service tax and in this regard, he relies upon Section 66D(a) of the Finance Act, 1994, which is reproduced hereunder for easy reference:

"66D. The negative list shall comprise of the following services, namely:-

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere –

(i) services by the Department of Posts by way of speed post, express parcel post, life



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insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;

9.2. Relying on the above, he submits that whenever there is a local authority which is involved in a transaction service, there would be no service tax which is required to be paid and local authority is exempted from such service tax.

9.3. Alternatively, he submits that the services have been rendered by the BBMP through the petitioners and therefore, no service tax is required to be paid by the Corporation to the petitioners on such service.



- 9.4. Insofar as proceedings initiated against the petitioners, he submits that the petitioners can always bring these facts to the knowledge of the authorities who would be duty bound to consider the same. Merely because proceedings are initiated by an authority do not make the Corporation liable to make payment of the amounts claimed. On that basis, he submits that the above petitions are required to be dismissed.
10. Heard Sri.Jayakumar S.Patil., learned Senior counsel for Sri.A.Mahammed Tahir, learned counsel for the petitioners and Sri.B.V.Krishna, learned counsel on behalf of Sri.S.N.Prashanth Chandra, learned counsel for the respondent and perused the papers.
11. The questions that would arise for consideration in the present matters are



11.1. Whether the services rendered by the petitioners in the present matter would be exempted under sub-clause (a) of Section 66D of Finance Act, 1994?

11.2. Whether the payment made by the Corporation to the petitioners would amount to services rendered by the Corporation in terms of sub-clause (i) of Section 66D of Finance Act, 1994 would also be a question that arises.

12. Both the above questions being related to each other are answered together.

13. It is not in dispute that the Corporation has engaged the services of the petitioners to render services to the persons/students belonging to economically weaker section in order to provide computer training to such persons. It is also not in dispute that the persons who have availed the services have not paid any amount but it is on their behalf that the Corporation has made payment of a sum of Rs.3,500/- per person to the petitioners.



14. Sub-Section (a) of Section 66D of Finance Act, 1994 has been reproduced hereinabove which indicates that the services by Government or local authority excluding the services under sub-clause (i) to sub-clause (iv) thereof would be in the negative list and in terms thereof no service tax would be payable on such services.

15. What is required to be seen is that in terms of sub-section (a) of Section 66D of the Finance Act, services by a Government or local authority who would be comprised in the negative list. For that purpose, a service would be required to be provided by the Government or local authority and it is the Government or local authority which is required to receive the charges towards such service rendered as regards which there would be no service tax payable.

16. In the present case, the Corporation has entered into an agreement with the petitioners to render



computer training to persons identified by the Corporation as regards which those persons did not make payment of money, but the payment was made by the Corporation to the petitioners.

17. Though at first blush it may appear that services are rendered by the Corporation to the concerned candidate but in effect what has occurred is the petitioners have rendered the services on behalf of the Corporation to such candidate as regards which the Corporation has made payment of monies to the petitioners. Thus, when the Corporation makes such payment on a transaction with the petitioners, the service providers would be the petitioners and the service availer would be the Corporation and as such, it cannot be said to be that services are provided by the Corporation.

18. Thus, I am of the considered opinion that the present transaction would not come within the purview of sub-section (a) of Section 66D of Finance Act, 1994.



The matter would have been different if the concerned candidate paid the money to the Corporation, then the Corporation would not be required to make payment of any service tax on that amount. However, so long as the payment is made by the concerned candidate to the petitioners or by the Corporation to the petitioners, the service provider being the petitioners, there is an obligation on part of the petitioners to collect the service tax from the payee and be remitted to the concerned department. In that view of the matter, I am of the considered opinion that the stand taken by the Corporation that it is exempted from making payment under Section 66D of Finance Act is of no avail.

19. On enquiry as to the basis of legal opinion said to have issued to the Corporation, Sri.B.V.Krishna, learned counsel for Corporation submits that said basis is Section 66D of the Finance Act. If that be



so, having dealt with the issue above, the legal opinion is also misplaced. Hence, it would not come to the rescue of the Corporation.

20. In the above background, I answer the points raised by holding that the Corporation availing the services of the petitioners to render computer education to persons belonging to economically weaker section as regards which the Corporation has made the payment of monies to the petitioners would be amenable to service tax, that is to say, it is not exempted from service tax. In view of my answer to above point, I pass the following:

ORDER

- i) The Writ Petitions are ***allowed***.
- ii) In W.P.No.44252/2015 and W.P.No.48640/2015, a certiorari is issued. The order bearing No.Ka.A./Ken.Ka/C3/P.R/51/2006-07 dated 19.02.2013 passed by respondent at Annexure-K is hereby quashed.



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iii) Respondent is directed to consider the representations dated 20.07.2015 vide Annexure-P submitted by the petitioners in W.P.No.44252/2015 and W.P.No.48640/2015 and the representation submitted by the petitioner in W.P.No.48639/2015 at Annexure-H within a period of four weeks from today and calculate the service tax due on the amounts paid and payable by the respondent to the petitioners and release the said amounts to the petitioners within a period of four weeks from the date of receipt of copy of this order.

Sd/-
JUDGE

PRS
List No.: 1 Sl No.: 92