

CWP No.4755 of 2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4755 of 2021
Date of decision: 13.04.2023

M/s Bhupinder Singh and Associates

.....Petitioner

Versus

Commissioner Central GST and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Anshuman Chopra, Advocate,
for the respondents..

Ritu Bahri, J.

Petitioner-M/s Bhupinder Singh & Associates is seeking a writ in the nature of certiorari quashing the order dated 15.12.2020 (Annexure P-9) passed by respondent No.1 on the ground that it has been passed after the expiry of reasonable period of five years from the date of show cause notices dated 23.10.2013 and 16.10.2015 (Annexures P-3 and P-6) as per the judgment passed by this Court in **GPI Textiles Ltd. vs. Union of India and another**, CWP No.10530 of 2017 (decided on 02.08.2018) (Annexure P-12).

The petitioner is a works contractor under civil contract, mainly of Punjab Police Housing Board, Improvement Trust, Guru Nanak Devi University and Dainik Prarthana Sabha. Since the activity undertaken by the petitioner was exempted from payment of service tax in view of notification

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dated 20.06.2012 (Annexure P-1), the petitioner did not get itself registered under the Finance Act, 1994 and did not obtain Service Tax Registration Number. However, in the year 2014, the petitioner got itself registered with the Service Tax Department. Copies of the work orders/agreements entered into by the petitioner for the period 2008-09 to 2014-15 have been annexed as Annexure P-2 in order to show that it (petitioner) has executed the works of Punjab Police Housing Corporation, Dainik Prathana Sabha, Improvement Trust, Sati Lakshmi Devi Gaushala Trust, Guru Nanak Devi University and other educational institutional.

Since, the petitioner was not registered with the department, it was issued show cause notices dated 07.05.2013 and 16.05.2013 to provide the copies of balance sheets, profit and loss account statements and Income Tax returns for the last five years. This information was given by the petitioner vide letter dated 31.05.2013 submitting that the petitioner being a Government contractor, was executing works which were exempted from the Service Tax. Thereafter, the petitioner was asked to furnish the copy of agreements, pursuant to which, the works had been executed.

The petitioner was issued show cause notice dated 23.10.2013 (Annexure P-3) for the period 2008-09 to 2011-12, stating that the it had provided services of Rs.13,47,95,161/- and was liable to pay service tax of Rs.1,66,60,682/-, including education cess and secondary and higher education cess. The service tax had been imposed stating that the petitioner had contravened the provisions of Sections 66, 67, 68, 69 and 70 of the Act read with Rules 4, 4A, 5, 6 and 7 of the Service Tax Rules, 1994. The service tax amounting to Rs.1,66,60,682/- along with interest under Section 75 and penalty under Sections 76, 77 and 78 of the Act was also proposed to

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be imposed. The petitioner submitted its reply dated 21.11.2013 (Annexure P-4) giving details of the break-up of the works executed by it during the years 2008-09 to 2011-12. Thereafter, the petitioner was served with another show cause notice dated 27.03.2014 for the period 2012-13 and 2013-14 (upto September, 2013) demanding service tax of Rs.2,53,79,546/- along with interest and penalty on the similar issues. The petitioner gave its reply dated 24.04.2014 (Annexure P-5) taking the pleas that the works executed by the it were exempted from payment of service tax. Along with reply, details of the works executed by the petitioner during the years 2012-13 (upto September 2013) were also given. Petitioner was issued another show cause notice dated 16.10.2015 (Annexure P-6) for the period October, 2013 to March, 2015 demanding service tax of Rs.1,49,69,456/- along with interest under Section 75 and penalty under Sections 76, 77 and 78 of the Act. Petitioner gave its reply dated 13.10.2015 (Annexure P-7) taking the plea that majority of the works executed by it were purely Government works or of non-profitable and charitable society and the same are exempted from payment of service tax. Insofar as other works executed by the petitioner are concerned, the petitioner submitted that it had deposited Rs.1,90,221/- vide challan dated 28.09.2015, which was pointed out to it during the audit by the auditors and due to lapse of 90 days, the petitioner was not able to revise the return of the said period. The work executed by the petitioner for Ms Vandana Kad (individual) was with regard to a residential house, which was for personal use of the recipient and the same was out of the purview of service tax.

After a gap of more than five years, the petitioner was served with a notice of personal hearing on 17.06.2020, to which, it (petitioner) filed a

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reply dated 08.08.2020. Subsequently, the petitioner filed another reply dated 10.09.2020 (Annexure P-8) requesting for vacation of the notice. Finally, order dated 15.12.2020 (Annexure P-9) (received on 24.12.2020) was passed by the Commissioner of Goods and Service Tax Commissionerate, Jalandhar, confirming the following demands:-

Sr. No.	Show Cause Notice dated	Tax	Interest	Penalty
1	23.10.2013	1,65,62,832/-	U/s 75	10,000 u/s 77 1,65,62,832 u/s 78
2	27.03.2014	2,53,79,546/-	U/s 75	10,000 u/s 77 25,37,955 u/s 76
3	16.10.2015	1,44,68,876	U/s 75	10,000 u/s 77 14,46,888 u/s 76

Hence, the present petition.

Learned counsel for the petitioner has argued that as per clause (b) to Section 73 (4B) of the Finance Act, the Central Excise Officer has to determine the amount of service tax due within one year from the date of notice. In the present case, said order has been passed after the expiry of five years from the date of notice. He has further referred to the instructions dated 17.09.2015 (Annexure P-10), which were issued by the Central Board of Excise and Customs for streamlining the process of adjudication. As per the said instructions, matter has been viewed seriously and all the adjudicating authorities are directed to pass adjudication orders within time limits as prescribed, so that the delay is not repeated in future. On this aspect, learned counsel for the petitioner has referred to the judgment passed by the Delhi High Court in **Sunder Systems Pvt. Ltd. vs. Union of India and others**, WP (C) 8675 of 2017 (decided on 17.12.2019) (Annexure P-11), whereby it has been held that as per Section 73 (4B) of the Finance Act, the

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statutory authority has to decide the show cause notice within the time prescribed and if, it is not done so in time, the show cause notice is liable to be set aside on the issue of limitation alone. He has referred to another judgment passed by the Gujarat High Court in **Siddhi Vinayak Sintex Pvt. Ltd. vs. Union of India**, 2017 (352) ELT 455, whereby same view has been taken that delay in conclusion of proceedings pursuant to show cause notices after a long gap without proper explanation is unlawful and arbitrary. Further, reference has been made to the judgment passed by this Court in **Bathinda District Cooperative Milk Producers Union Ltd. vs. State of Punjab**, (2007) 8 VST 418 (P&H), wherein it was held that the assessment order can be revised within a reasonable period of five years. The said judgment was further affirmed by Hon'ble the Supreme Court in **State of Punjab vs. Bathinda District Cooperative Milk Producers Union Ltd.**, 10 VST 180, whereby it was opined that five years would be the reasonable period in the absence of any time period prescribed in the Act.

Learned counsel for the petitioner, thereafter, referred to the judgment passed by this Court in **M/s Shree Baba Exports through proprietor Ms. Jyotsna Agarwal vs. Commissioner, GST & Central Excise, Commissionerate, Chandigarh and another**, CWP No.11860 of 2021 (decided on 15.03.2022), whereby decision given in **M/s GPI Textiles Limited's** case (supra) has been followed.

Learned counsel for the petitioner further informed that against the judgment passed in **M/s Shree Baba Exports's** case (supra), Special Leave to Appeal (C) No. 12376 of 2022 filed by the revenue has been dismissed by Hon'ble the Supreme Court vide order dated 29.07.2022.

At this stage, learned counsel for the respondents has informed

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that SLP against the judgment passed in **Siddhi Vinayak Sintex Pvt. Ltd.'s** case (supra) is pending consideration before Hon'ble the Supreme Court.

Learned counsel for the petitioner has not disputed the above said fact, however, he stated that no interim stay has been granted in the appeals, which are pending before Hon'ble the Supreme Court with respect to the matter under challenge.

Issue in the present case is squarely covered in favour of the petitioner keeping in view the judgments referred to above, especially the decision rendered in **GPI Textiles Ltd.'s** case (supra). Since, no interim stay has been granted by Hon'ble the Supreme Court in the above mentioned appeals, the present petition is allowed and the impugned order dated 15.12.2020 (Annexure P-9) is set aside.

(RITU BAHRI)
JUDGE

(KULDEEP TIWARI)
JUDGE

13.04.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No