IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.12198 of 2019
and
WMP.Nos.12470 & 27704 of 2019

White Cliffs Hair Studio Private Ltd.,
Rep. by its Managing Director S.Ravichandran,
Old No.23, New No.8, Venus Colony, 2nd Street,
Alwarpet,
Chennai 600 018. ... Petitioner

Vs

Additional Commissioner,
Office of the Principal Commissioner of CGST and Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai-600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in C.No.V/15/52/2018-GST-Ch.N-Adj. in Order in Original No.14/2019-CH.N (ADC) dated 11.02.2019, passed by the Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.D.Naveen Duraibabu
for Mrs. Hema Muralikrishnan

O R D E R

The petitioner is a Hair Studio stated to be engaged in Non-surgical Hair Replacement/Cranial Prosthesis for persons who have suffered hair loss. One question that I would advert to straightaway is as regards the argument of maintainability of the Writ Petition which is put forth by the respondent.

2.The impugned order is an order-in-original and hence amenable to statutory appeal. Thus, respondent would urge that the Court apply the bar of alternate remedy and relegate the petitioner to first appeal. The question to be answered is as to whether the activity carried on by the petitioner in the hair studio, the details which are set out in the paragraphs to follow, constitutes sale of a product, being a wig, or service of preparation of wig and fitment thereof.

3.Though normally Courts are reluctant to consider challenges as against original orders, in cases where the relevant facts are undisputed, there is no purpose to be served in relegating the petitioner to statutory

appeal. The facts in this case as well as in the manner in which the business operations are carried out are very clear and in fact the presentation of the facts by the petitioner before the Assessing Authority has been replicated in minute detail by the Authority penultimate to the conclusion. I, thus, see no necessity to relegate the petitioner to appellate remedy and this argument of the respondent is rejected.

4.The business activity of the petitioner as captured in the impugned order is summarised below:

(a) The manufacture of wigs falls under Chapter 67 of the Central Excise Tariff Act, 1985 and the petitioner remits Central Excise Duty in terms of Section 3(1) of the Central Excise Act, 1944 thereupon.

(b) The petitioner also admittedly offers the entirety of the turnover from manufacture and fitment of the wig to Value Added Tax (VAT) adopting the stand that it constitutes sale of a commodity, and the service rendered, of preparation and fitment, is only incidental to the sale.

(c) The wig, once manufactured, is to be fitted, the first step is to measure the head, then test the skin for endurance. The wig is thereafter prepared to the specific dimensions of the client. An option is also available

to colour the wig if desired.

(d) The head is prepared by shaving and cleaning, and oil is applied to the scalp to rid it of dryness. A mud pack may be applied to rid it of excess sweat glands.

(e) The head is then washed, conditioned and sterilized with dettol. The wig is thereafter pasted onto the head with medical tape and glue and the hair on the wig is cut so as to match the existing hair style.

(f) The wig is also maintained, if the client so desires, and re-groomed either fully i.e. by removal of wig, sterilization, cleaning of the scalp and replacing the wig or partly i.e. washing and tightening the loose ends.

5. On the aforesaid facts, the legal issue that arises is whether the intrinsic or dominant nature of the transaction is one of sale of a wig or rendition of service. The petitioner relies upon a decision of the Karnataka High Court in the case of *Commissioner of Central Excise, Mangalore Vs.* Beau Monde's Clinic [2008 (1) TMI 374].

6.The impugned order, as supported by the submissions of the learned Standing Counsel, concludes that the activity would fall squarely within the definition of service under Section 65B(44) of the Finance Act, 1994,

effective from 01.07.2012. The definition of service thereunder is an inclusive one, meaning any activity carried out by a person for another for consideration, with certain exceptions.

7.The authority proceeds on the basis that none of the exceptions, including (i) transfer of title in goods or immovable property (ii) deemed sale (iii) a transaction in money (iv) actionable claim, would apply in the instant case. He, thus, proceeds to bring the entirety of the turnover as per the balance sheet of the petitioner, reducing there from, the sale value of the laser combs that have been offered to tax at 14.5% VAT, to tax as service.

8.Upon a consideration of the relevant details as well as the arguments advanced, I am of the view that the petitioner must succeed. Without question, the integral component of the transaction in the present case is the wig itself, as without the wig, there would be no transaction perse. The fitment of the wig and the preparation of the scalp to receive the wig is, in my view, incidental to the product itself.

9.The question as to whether the sale fuels the service or vice-versa, is answered in light of the admitted facts as noticed in the above paragraphs. The primary activity carried on by the petitioner is the manufacture of the

wig, for which it remits central excise duty. The fitment of the wig, including the preparation of the scalp, and optional maintenance of the wig itself, are incidental to the product.

10. The Hon'ble Supreme Court, in the case of *Imagic Creative Pvt. Ltd. Vs. Commissioner of Commercial Taxes* [2008 (9) S.T.R. 337 (S.C.)], has specifically noted the difference between a composite contract and an indivisible one. A composite contract is one that would involve components of sale and service whereas an indivisible contract, also involving components of sale and service, is one where the distinction between the two is very fine and difficult to determine.

11.At paragraph No.28 of the Order, the Bench states that payments of service tax as also VAT are mutually exclusive and their applicability must be determined based on the nature of the transaction. So too in the present case. The dominant transaction in the present case is the manufacture and supply of the wig.

12. To be noted that a client could well purchase a wig without opting for the service of fitment or maintenance. The services of preparation of the scalp, fitment as well as maintenance of the wig, are merely to facilitate and

aid in the utilization of the product and would have no relevance in the absence of the wig.

14.In light of the discussion as above, the impugned order of assessment fails and this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

kbs **08.07.2022**

Index : Yes
Speaking Order

To

Additional Commissioner,
Office of the Principal Commissioner of CGST and Central Excise,
Chennai North Commissionerate,
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DR.ANITA SUMANTH, J.
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