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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1085 OF 2024

Adv. Pooja Patil

..Petitioner

Versus

The Deputy Commissioner,
CGST and CX Division VI,
Raigad Commissionerate & Ors.

..Respondents

Mr. Chetan Kapadia a/w Raturaj Pawar, for the Petitioner.

Ms. Sangeeta Yadav a/w Ashutosh Mishra, for the Respondents.

CORAM : G. S. KULKARNI &
KISHORE C. SANT, JJ.

DATE : 24th JANUARY, 2024

Oral Judgment : (Per G. S. Kulkarni, J.)

1. This Petition under Article 226 of the Constitution of India assails an Order-in-Original dated 26th October, 2023 passed by the Deputy Commissioner, CGST and C. Excise, Raigad, whereby an amount of Rs.35,82,298/- towards service tax under the provisions of Section 73(1) of Finance Act, 1994 read with Section 174 of Central Goods and Service Tax Act, 2017, has been ordered to be recovered from the Petitioner *inter-alia* with interest and penalty. The operative part of the impugned order reads thus :-

“ORDER

- (i) I confirm the Service Tax demand of Rs.35,82,298/- (Rupees Thirty Five lakh Eighty Two Thousand Two Hundred and Ninety Eight Only) (including E. Cess SHE Cess, Swachh Bharat Cess and Krishi Kalyan Cess

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as and where applicable) under the proviso to Section 73(1) of Finance Act, 1994 read with Section 174 of Central Goods and Service Tax Act, 2017 (CGST Act, 2017) and the same should be recovered from M/s. Pooja Chandrashekhar Patil forthwith.

(ii) I order recovery of Interest at appropriate rates and as applicable in force, on the demand confirmed at (I) above, under Section 75 of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017 from M/s. Pooja Chandrashekhar Patil.

(iii) I impose Penalty of Rs.35,82,298/- on M/s. Pooja Chandrashekhar Patil under the provisions of Section 78 of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017, however, the benefit of reduced penalty is available to M/s. Pooja Chandrashekhar Patil in terms of Second proviso to Section 78 of the Finance Act, 1994.

(iv) I impose Penalty of Rs.10,000/- on M/s. Pooja Chandrashekhar Patil under Section 771(1)(c) of the Finance Act, 1994 read with Section 174 of Central Goods and Services Tax Act, 2017, as discussed under para 15.4 above.

(v) I impose Penalty of Rs.10,000/- on M/s. Pooja Chandrashekhar Patil under Section 77(1)(a) of the Finance Act, 1994 for failure to take registration in accordance with the provisions of section 69 of the Finance Act, 1994, as discussed under para 15.5 above.

(vi) I impose Late fee of Rs.1,20,000/- under Section 70(1) of the Finance Act, 1994 read with Rule 7(C) of the Service Tax Rules, 1994 for late/non filing of ST-3 returns beyond the due date and order recovery of the same from M/s. Pooja Chandrashekhar Patil, as discussed under para 15.6 above.”

2. The Petitioner has contended that she is an advocate practicing in this Court. The primary contention of the Petitioner in assailing the impugned order is to the effect that Respondent No.1 in passing the impugned order has acted in patent lack of jurisdiction, hence, interference of this Court in the present proceeding would be justified. It is contended that apart from this, there are several procedural illegalities,

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amounting to a breach of the principles of natural justice, in passing such order.

3. The Petitioner has contended that on 5th October, 2023, an email was received by the Petitioner to attend a hearing on 17th October, 2023, on which date, the Petitioner appeared through her Chartered Accountant. On 18th October, 2023, the Petitioner addressed a letter to the Designated Officer attaching an email dated 5th October, 2023 which merely referred to the show-cause notice dated 24th December, 2020, which was never received by the Petitioner. It was recorded that even the Chartered Accountant who represented the Petitioner was not furnished a copy of the show-cause notice, as also the website referred only to the personal hearing letter. It was pointed out that neither Service Tax nor GST were applicable and/or payable by advocates, hence any attempt to pass an order would be without jurisdiction. It is contended by the Petitioner that on such backdrop instead of the proceedings being dropped on 9th January, 2024, the Petitioner by email received the impugned order dated 26th October, 2023. It is on such backdrop, the present Petition is filed praying following substantive reliefs :-

“(a) this Hon’ble Court be pleased to issue of writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 & 227 of the Constitution of India calling for the records and proceedings in respect of the impugned show case notice dated 24th December, 2020 (a copy whereof has not been received by the Petitioner, and hence, not produced), the communication dated 5th October, 2023 (Exhibit a hereto) as well as the Impugned Order dated 26th October, 2023 and communicated on 9th January, 2024 (Exhibit B hereto), and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;”

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4. Mr. Chetan Kapadia, learned senior counsel for the Petitioner would submit that the impugned order would be required to be set aside on two primary grounds. Firstly, that the show-cause notice on the basis of which the impugned order has been passed was neither issued nor received by the Petitioner. It is next submitted that the impugned order is in the teeth of the Respondents own notification(s) dated 20th June, 2012 being Notification No.25-30/2012-Service Tax, which categorically exempted individual advocates from the purview of taxable services and levy of any service tax. Mr. Kapadia would submit that once the Order-in-Original itself was without jurisdiction and in the teeth of the Notification(s) which were binding on the Designated Officer, he could not have passed the impugned order. Our attention is also drawn to an order dated 16th October, 2023, passed by Co-ordinate Bench of this Court in **Writ Petition (L) No.25269 of 2023 (Ish Kiran Jain Vs. The Assistant Commissioner & Ors)**, which was also a case of an advocate approaching this Court in similar circumstances wherein the Court had interfered.

5. On the other hand, Ms. Sangeeta Yadav, learned counsel for the Respondents would not dispute the purport of the Notification No.25/2012-Service Tax dated 20th June, 2022 and Notification No.30/2012-Service Tax dated 20th June, 2022 that the same exempts services provided by individual advocate from levy of the service tax.

6. We have heard learned counsel for the parties. We have also perused the record. At the outset, we may observe that it appears that the Petitioner was not granted an opportunity of an appropriate hearing before

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the impugned Order-in-Original was passed against the Petitioner. Hence, there is substance in the contention as urged on behalf of the Petitioner that in passing the impugned order, there is a breach of the principles of natural justice. To this effect the Petitioner had infact addressed a detailed letter to the Designated Officer dated 18th October, 2023, which was post the hearing, which had taken place on 17th October, 2023 when the Petitioner's representative/Chartered Account appeared before the Designated Officer, inter alia making such grievance, as also contending that the service tax is not leviable on an individual advocate, under the said notifications issued by the Central Government.

7. In our opinion, what is more fundamental is that the Designated Officer although was pointed out that he would not have jurisdiction to take forward the proceedings, inasmuch as service tax was not leviable on the individual advocate, as per the provisions of notification(s) as noted above, such contention has not been considered by the Designated Officer in passing the impugned order. We may note the relevant extract of each of these Notifications, which reads thus :-

Government of India
Ministry of Finance
(Department of Revenue)

Notification No.25/2012-Service Tax

New Delhi, the 20th June, 2012

G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number

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G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
6. Services provided by-
 - (a) an arbitral tribunal to –
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
 - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services;”
(emphasis supplied)

.....

Government of India
Ministry of Finance
(Department of Revenue)
Notification No.30/2012-Service Tax

New Delhi, the 20th June, 2012

GSR.....(E).-----In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No.15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No.36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government

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hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I.

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sl.N	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
	in respect of services provided or agreed to be provided by Government or local authority by way of support service excluding- (1) renting of immovable property, and (2) services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994	Nil	100%

(emphasis supplied)

8. It is thus clear that as set out in the Notification, the taxable

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service in respect of services provided or to be provided by the individual advocate for a firm of advocates has been set out to be 'Nil'. Similarly Notification No.25/2012 dated 20th June, 2012, also clearly provides that the service provided by an individual advocate, partnership firm of advocates, by way of legal services being exempted from levy of service tax.

9. If the aforesaid position is to be the correct position, certainly the Designated Officer has acted without jurisdiction having acted contrary to the binding notifications. In the case of **Ish Kiran Jain (cited supra)**, this Court in paragraph 5 referring to the different decisions of this Court as also a decision of the Jharkhand High Court, the Court observed thus :-

“5. The petitioner has also referred to the decision of the Division Bench of this Court in the case of **P.C. Joshi Vs. Union of India [2015(37) S.T.R. 6]** to contend that although the said decision recognised the levy of service tax on advocate, the same has been stayed by the Supreme Court. The Petitioner has also placed reliance on the decision of the Jharkhand High Court in the case of **Madhu Sudan Mittal Vs. Union of India [2023(70)GSTL 124]**, to contend that in such decision, the Jharkhand High Court has held that demand notice for payment of service tax on legal services provided by advocate was not sustainable.”

10. We may observe that the notifications which are now placed for consideration of the Court are absolutely clear, they were not the subject matter of consideration in the case of **Isha Kiran Jain (cited supra)**. We are thus of the considered opinion, that no useful purpose would be achieved in present proceeding remanding to the Designated Officer. We deem it fit in the interest of justice to quash and set aside the impugned order, for the reasons that the Designated Officer has acted without jurisdiction and as

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the impugned order is passed patently, contrary to the notifications dated 20th June 2012 (supra). The Petition accordingly needs to succeed. It stands allowed in terms of prayer clause (a).

11. Disposed of in above terms. No costs.

[KISHORE C. SANT, J.]

[G. S. KULKARNI, J.]