

Practicing advocates exempted from service tax/GST, should not have to face harassment from GST Department

The Hon'ble Orissa High Court in *Devi Prasad Tripathy v. the Principal Commissioner CGST and Central Excise [W.P.(C) No. 27727 of 2020, dated April 22, 2021]* quashed the notice demanding to pay service tax/GST issued to the advocates. Held that, practicing advocates should not have to face harassment on account of the Department issuing notices calling upon them to pay service tax/GST when they are exempted from doing so, and in the process also having to prove they are practicing advocates.

Facts:

Devi Prasad Tripathy (“**the Petitioner**”) is an individual advocate practicing in the Hon'ble High Court of Odisha. A notice was issued calling upon the Petitioner to pay service tax/GST by the officials of the Principal Commissioner CGST and Central Excise (“**the Respondents**”). Further, the Petitioner has been insisted to submit the documentary evidence to prove its claim that the Petitioner is a practicing advocate and does not come under the provision of GST or service tax.

The Court vide its order dated March 31, 2021, directed the Respondent, to issue clear instructions to all the officers in the GST Commissionerates in Odisha not to issue notice demanding payment of service tax/GST to lawyers rendering legal services and falling in the negative list, as far as GST regime is concerned.

Issue:

Whether the notices issued by the Respondents calling upon the Petitioner to pay service tax/GST are valid?

Held:

The Hon'ble Orissa High Court in *W.P.(C) No. 27727 of 2020, dated April 22, 2021* held as under:

- Noted that, after receiving the information from the Petitioner as being an individual practicing advocate, further proceedings were dropped.
- Observed that, certain other advocates too have received such notices.

- The Court expressed its concern and held that, practicing advocates should not have to face harassment on account of the Respondent issuing notices calling upon them to pay service tax/GST when they are exempted from doing so, and in the process also having to prove they are practicing advocates.
- Further noted that, the Respondent has issued the instructions on April 9, 2021 and April 15, 2021 reiterating, *inter alia*, that the services provided by an advocate or a partnership firm of advocates providing legal services to any person other than a business entity and to a business entity with a turnover up to rupees ten lakhs in the preceding financial year are exempted from levy of service tax.
- Quashed the notices issued by the Respondent.

Our comments:

Recently, the Hon’ble Bombay High Court in ***Sanjiv Madhusudan Shah v. Assistant Commissioner of Central and Service Tax & Ors. [Writ Petition (L) No. 646 of 2021, dated January 12, 2021]*** had stayed a demand notice issued, seeking to levy service tax upon an advocate and issued notice to the Revenue Department for seeking response on the matter. Considered the Petitioner’s submission that, the Central Government has issued several exemption notifications whereby services provided by an individual as an advocate or as a partnership firm of advocates by way of legal services are exempt from the charge of service tax. Further, there is a provision for recovering service tax from the service recipient and ignoring the same, the show cause cum demand notice has been issued mechanically. However, the petition was disposed as withdrawn on April 20, 2021.

Relevant Provision:

Sl. No 45 of the Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 (“Services Exemption Notification”):

<i>S. No.</i>	<i>Heading</i>	<i>Description of services</i>	<i>Rate</i>	<i>Condition</i>
<i>“45</i>	<i>Heading 9982 or Heading 9991</i>	<i>Services provided by- (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-</i>	<i>Nil</i>	<i>Nil</i>

		<p>(i) <i>an advocate or partnership firm of advocates providing legal services;</i></p> <p>(ii) <i>any person other than a business entity; or</i></p> <p>(iii) <i>a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017);</i></p> <p>(iv) <i>the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;</i></p> <p>(c) <i>a senior advocate by way of legal services to-</i></p> <p>(i) <i>any person other than a business entity; or</i></p> <p>(ii) <i>a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017).</i></p> <p>(iii) <i>the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.”</i></p>		
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