

Court No. - 21

Case :- WRIT TAX No. - 1148 of 2023

Petitioner :- Chandan Kumar Rai

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- A.S.G.I.,Om Prakash
Mishra,Parv Agarwal

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Donadi Ramesh,J.

1. On oral prayer made by learned counsel for the petitioner, he is permitted to implead Commissioner (Appeals) Central Goods and Service Tax, Meerut as respondent no. 4 in the writ petition.

2. Heard Sri Rahul Agrawal, learned counsel for the petitioner and Sri Parv Agarwal, learned counsel for the respondents. With the consent of learned counsel for the parties the petition is being disposed of finally without inviting any counter affidavit.

3. The petitioner is an Advocate on Record in the Supreme Court of India. He has assailed the order dated 30.12.2022 (signed on 29.12.2022) passed by the Deputy Commissioner, Central Goods and Service Tax, Commissionerate, Ghaziabad (respondent no. 2). His firm M/S Chandan Kumar Rai, 209, II Floor/Sector 3F/Vaishali was registered with the Service Tax Department for providing taxable services. By the said order the petitioner has been saddled with a liability of service tax to the extent of Rs. 5,22,358/- under proviso to Section 73(1)

of the Finance Act, 1994 read with 174(2) of Central Goods and Services Tax Act, 2017 and also penalty. The services rendered by the petitioner have been held to be taxable during the financial year 2015-16. The basis for coming to the said conclusion is the entries in form 26AS showing deduction of T.D.S. by the recipient of the services rendered by the petitioner, during the said period.

4. The specific case of the petitioner is that in response to intimation dated 18.03.2021 the petitioner sent a reply on E-mail address given in the intimation letter i.e. ITSK2011@gmail.com specifically stating that he is practising as an Advocate on Record in the Supreme Court and other Courts of law and the legal services rendered by him to his clients are exempt from payment of service tax as per Clause 6(b) of the notification dated 20.06.2012.

5. Sri Rahul Agarwal, learned counsel appearing on behalf of the petitioner has invited our attention towards the said exemption clause in the notification dated 20.06.2012, according to which legal advice rendered to any person, other than a business entity was exempt from Service Tax for an individual who practices as an advocate or a partnership firm of an advocate. He submits that there is another notification dated 20.06.2012 by Government of India, Ministry of Finance, whereby taxable services and the extent of service tax payable thereon by the person liable has been specified. Under paragraph 1, the taxable services provided by any individual advocate or a firm of advocate by way of legal

services other than representation service by senior advocates to any business entity directly or indirectly in taxable territory is the liability of the person availing the legal service. It is submitted that accordingly the liability, if any, was that of a recipient of the service and consequently, the impugned order is wholly illegal.

6. Sri Parv Agarwal, learned counsel appearing on behalf of the respondents points out that the petitioner has already availed the remedy of appeal but since he has not complied with the conditions of pre-deposit of 7.5% of the amount assessed, therefore the appeal is lying defective.

7. Counsel for the petitioner does not dispute the aforesaid fact. He submits that the petitioner will deposit the said amount but prays that a direction be issued to the appellate authority to decide the appeal, particularly the issue relating to the nature of services rendered by the petitioner during the relevant year, to which learned counsel appearing on behalf of the Revenue has no objection.

8. Accordingly, we dispose of the instant petition with liberty to the petitioner to comply with the condition relating to pre deposit, within two weeks from today and in which case, respondent no. 4 will decide the appeal by a speaking order after affording full opportunity of hearing to the petitioner within next four weeks.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, J.)

Order Date :- 30.10.2023/Ruhi H.