IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1735 OF 2015

Sunil Agnihotri Productions ... Petitioner
v/s
Union of India and others ... Respondents

Mr Abad H. Ponda with Mr Gautam Tiwari i/b Mr Manish Pabale for Petitioner.
Mr M.S. Bhardwaj for Respondent No.1.
Mr Pradeep S. Jetly with Mr Jitendra B. Mishra for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 1ST SEPTEMBER 2015

***P.C.*:-**

1. By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking a writ of certiorari or any other appropriate writ, order or direction calling for the records and the impugned office letters (Annexure 'A' colly.) issued by the Respondent No.2 and thereafter to quash and set aside the same.

2. The Petitioner is a proprietor of the sole proprietary firm. The 1st and 2nd Respondents viz. Union of India and the Commissioner of Service Tax, Mumbai are enforcing the Finance Act 1994 and recovering the service tax.

3. The Petitioner does not dispute that he sought to avail of the benefit of Service Tax Voluntary Compliance Encouragement Scheme 2013 which encourages persons like the Petitioner to declare their tax dues on their own under section 73A of the Act and in the present case, the service tax dues of the Petitioner from 1st October 2007 and ending on 31st December 2012. The Petitioner does not dispute that under the Scheme and for availing the benefits thereof, there is a condition that the Petitioner must and on or before 31st December 2013 pay not less than 50 % of the tax dues and submit proof thereof.

4. The Petitioner declared the dues to the extent of Rs.96,28,837/-. The sum equivalent to 50 % of the same was calculated and arrived at Rs.48,14,419/-. That was to be paid before

31st December 2013 and thereafter balance tax dues or remainder was to be paid on or before 30th June 2014. The Petitioner could not comply with this condition and pointed out his own difficulties.

5. We have not been shown any right created by any law in favour of the parties like the Petitioner that they will go on defaulting in payment of tax and that their hard and difficult times should be taken note of either by the authorities or by the Court to give such concessions and reliefs as are now sought. If the admitted tax dues is not remitted and deposited even under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, then the Petitioner cannot fault the authorities for addressing the impugned communications, recovering 'tax dues' by coercive means if permissible in law. The Petitioner may have some amount as stated to be lying with the Income Tax Authorities, however that is a distinct tax and under the distinct Act of the Parliament.

6. The Parliament equally enacts the Finance Act and allows levy, imposition and recovery of service tax. It is this latter tax

which is subject matter of the Petition. The Petitioner is clearly in arrears of payment of the same.

7. We cannot compel at the instance of the defaulter like the Petitioner the Service Tax Department to recover the amounts as desired by the Petitioner and in a particular manner alone. Once there is nothing contrary in law and recovery by the means resorted is permissible, then at the instance of the present Petitioner, we do not think that exercise of our discretionary and equitable jurisdiction is warranted. The Petitioner having no legal right cannot insist on the recovery as contended and in the manner determined by the Petitioner. The mandate under section 87 of the Act is to recover tax dues and not in the manner desired by a defaulter. In the circumstances, there is no merit in the Writ Petition and it is dismissed. No costs.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)**