IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CAW NO. 423/2015 IN WRIT PETITION NO. 186 OF 2015

(M/s. Ex-Servicemen's Multipurpose Services (India) Pvt. Ltd. Represented by its MD Shri Nitin Umesh Deveshwar vs. The Additional Commissioner of Customs, Central Excise & Service Tax, Nagpur & Anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
MARCH 25, 2015.

Heard Shri Tejwani, learned counsel for the applicant - petitioner and Shri Deshpande, learned counsel for the respondent.

2. The prayer is to modify the judgment passed by this Court on 06.02.2015 and to direct the department (Customs, Central Excise and Service Tax), to withdraw the notices issued to customers of the petitioner. There is also a prayer to extend time to enable the petitioner to comply with an undertaking as recorded in judgment dated 06.02.2015.

3. The petitioner submits that though Bank account was released, as the department forwarded notices to the customers of the petitioner, the customers have not cleared the bills and hence the petitioner is not in a position to discharge the liability. Therefore, the undertaking cannot be complied with.

4. Shri Tejwani, learned counsel submits that as agreed before this Court, the petitioner has paid an amount of Rs.73 lakh immediately and thereafter an amount of Rs. One crore on 23.02.2015. The customers have informed the petitioner that they are unable to pay bills because of letters issued by the department. In the face of these letters, the petitioner could arrange to pay an amount of Rs. 50 lakh more thereafter. Now an amount of Rs. Three crore 15 lakh is outstanding. According to him, out of this outstanding amount, by coercive methods, the respondents have recovered roughly an amount of Rs.14 lakh and, therefore, an amount of Rs. Three crore one lakh only is to be paid. He submits that if those letters are withdrawn, customers will effect payment and out of that payment, the petitioner can then discharge the liability. If the customers do not make payment, the undertaking cannot be fulfilled and hence time to place on record compliance should be extended.

5. Shri Deshpande, learned counsel for the department has pointed out that judgment of this Court dated 06.02.2015 considers outstanding amount of service tax till 30.09.2014 only. The amount thereafter is still to be recovered. He points out that the petitioner did not file return even on earlier occasion and hence the tax could not be worked out. As no returns are filed even for the period after September 2014, the exact liability cannot be worked out. He invites attention to statements of the petitioner recorded by the department and placed before us with the

reply affidavit.

6. In reply, Shri Tejwani, learned counsel submits that due returns are already filed. He further submits that the amount from the customers can be allowed to be recovered by the department and after retaining their tax portion, the balance amount can be made over to the petitioner.

7. The respondents have issued letters to customers to safeguard their recovery. It is always open to them to proceed in accordance with law and to effect direct recovery from the customers. If the amount recovered is in excess or surplus, they have to hand it over back to the petitioner. However, here, the statements as recorded by the respondents show that the petitioner accepted that though he raised this amount and recovered service tax, it was not made over to the department, it was appropriated towards other commercial purposes. He has explained that a new venture was started at Vadodara and for it, that amount has been spent. In another statement recorded on 30.10.2014, he has stated that he was aware that service tax collected was to be deposited with the authorities within the stipulated time. He accepted that he has collected service tax but has not deposited it with the Government. He has explained that up to 2013-14, the service tax liability was about Rs.6.43 crore. He has also accepted that amount of service tax of Rs.10.34 crore was collected but not credited in the account of Central Government as on 08.10.2014. This included

above mentioned demand of Rs.6.43 crore.

8. These statements, therefore, show that though the amounts were recovered from the customers, the service tax was not paid. The dues looked into by this Court while disposing of Writ Petition No. 186 of 2015 are for the period up to 30.09.2014. The respondent – department has to recover the amount of Service tax becoming due thereafter.

9. In this situation, we are not inclined to modify the order or extend the time. Civil Application is, therefore, rejected. No order as to costs.

JUDGE **JUDGE**

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