IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2015

Coram

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.30592 of 2015
and
M.P.No.1 of 2015

Transcoastal Cargo & Shipping Ltd.,
First Floor, Catholic Centre, Armenian Street,
Chennai - 600 001.
(Rep. by its Authorized Signatory) ...Petitioner

Vs.

1. Union of India,
rep. by its Secretary, Ministry of Finance,
South Block, Delhi - 110 001.

2. The Commissioner of Service Tax,
12th Main Road, II Avenue,
Anna Nagar, Chennai. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records culminating in the order, dated 06.02.2015, issued by the Commissioner , Service Tax I Commissionerate, Chennai, in File C.No.IV/09/332/2013-STC) and to quash the same and consequently, to remand the matter to the second respondent to be heard afresh, after affording an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.Yasodvaradan, Senior Counsel
for
M/s.Bijesh Thomas

For Respondents : Mr.V.Sundareshwaran, SCGSC

O R D E R

Heard the learned Senior Counsel for the petitioner as well as the learned Senior Central Government Standing Counsel for the respondent. With their consent, the main Writ Petition itself is taken up for final hearing and disposal.

2. The case of the petitioner is that the petitioner, a Public Limited Company, was engaged in leasing of vessels and multi-modal transport service. It is the further case of the petitioner that the petitioner was registered with the Service Tax Department with Registration No.AABCT2937PST001. After such registration, the petitioner had discharged the liability towards service tax till 2010. Since commercial operations of the petitioner was brought to a standstill, the petitioner faced financial as well as administrative crunch. During the relevant period of time, certain clarifications were sought by the Service Tax Department, and the Senior Intelligence Officer of the respondent-Department called for certain documents from the petitioner, relating to service tax liability. Accordingly, the documents sought for had been furnished by the petitioner. On receipt of the said documents, a show cause notice, dated 22.10.2013, was issued, proposing/fixing service tax liability for the year 2009 - 2011, and the petitioner, pursuant to the same, filed their objection on 07.05.2014. The petitioner, in their objection, contended that they discharged their liability till 2010, and thereafter, their commercial operations were brought to a complete standstill, and hence, no liability was subsisting. To place all these facts and relevant materials, the petitioner sought for personal hearing, and accordingly, personal hearing was fixed on 17.12.2014. Since the Managing Director of the petitioner was in abroad, by their letter intimating their inability of the petitioner to appear for personal hearing on 17.12.2014, the petitioner requested for the same after 21.12.2014. It is the specific case of the petitioner that personal hearing was fixed on 07.01.2015, but no intimation, fixing the date of personal hearing on that particular date was received by the petitioner till date. Alleging that the petitioner did not respond to the notice for personal hearing, the respondent passed the impugned order, hence, the petitioner is before this Court.

3. The learned Senior Counsel for the petitioner submitted that the respondent ought to have afforded personal hearing to the petitioner, but the same was not adhered to, in violation of principles of natural justice. The learned Senior Counsel also submitted that, eventhough the petitioner fails to seek an opportunity of personal hearing, such personal hearing is a must

or otherwise, the action of the respondent would violate Article 14 of the Constitution of India. The learned Senior Counsel also submitted that, in the present case, the petitioner specifically requested so as to facilitate a fair and effective opportunity for satisfactory disposal of the controversy involved, which the respondent miserably failed. Hence, the learned Senior Counsel for the petitioner sought for quashing the impugned order.

4. Upon notice, the learned Senior Central Government Standing Counsel for the respondent submitted that the respondent dispatched the said notice, but unfortunately, no such acknowledgment is available on the file.

5. I have heard the respective counsel on record. When certain consequences, civil in nature, proposed to be inflicted against any of the parties, the person concerned ought to have been heard by the Authority, who is proceeding for passing the order. When the respondent is determining a justiciable controversy between the parties, he ought to have given the petitioner a fair opportunity to putforth their case to clarify or to defend any of the allegations levelled against the petitioner.

6. Considering the above, this Court is of the view that the petitioner should be given an opportunity of hearing, as the same is imperative, since the facts in the present case is to be decided and the question of law that arose for consideration also be properly dealt with. The matters in issue may adversely affect the petitioner with civil consequences and when such being the position, opportunity of personal hearing before passing such an order is a must.

7. In view of the above, the Writ Petition is allowed, the impugned order is set aside, and the matter is remitted to the respondent by fixing a date of personal hearing on 16.12.2015, on which date, the petitioner is directed to appear without fail. On such appearance, the respondent is directed to hear the petitioner, verify the documents and thereafter, pass appropriate orders on merits and in accordance with law within a period of six weeks. If the petitioner fails to appear on the said date, it is open to the respondent-Department to proceed

further in the manner known to law and pass appropriate orders on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

True Copy

Sub Assistant Registrar

To

1. The Secretary,
Union of India,
Ministry of Finance,
South Block, Delhi - 110 001.

2. The Commissioner of Service Tax,
12th Main Road, II Avenue,
Anna Nagar, Chennai.

+1cc to Mr.Bijesh Thomas, Advocate sr.62743
+1cc to Mr.V.Sundareswaran, Advocate Sr.62801

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gj[co]
srg 08/12/2015