THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.25919 OF 2015

O R D E R (Per the Hon'ble Sri Justice Challa Kodanda Ram)

The order-in-original dated 28.4.2015 passed by the Additional Commissioner of Customs, Central Excise and Service Tax, Guntur – 3rd respondent, is challenged before this court.

2. The learned senior counsel for the petitioner submits that the demand of service tax for the period 2009 to 2013, is totally illegal on account of the fact that the petitioner is a society registered under the Andhra Pradesh Societies Registration Act, 2001 and is totally under the administrative control of District Collector and other officials of the State. Further, the petitioner does not lease out the spaces as an enterprise or as a business and in that view of the mater, demand of service tax is totally illegal.

3. The learned senior counsel further submits that with respect to the earlier periods for 2007 to 2009, appeals filed by the petitioner are pending before the Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench, Bengaluru, and on consideration of facts, the Tribunal had waived the pre-deposit condition in exercise of the power conferred under Section 35 of the Central Excise Act, 1944. However, on account of the statutory amendment, which has been made to Section 35-F of the Act with effect from 06.08.2014, by amendment Finance (No.2) Act, 2014, the petitioner would be obligated to deposit 7 ½ per cent of the disputed tax. The learned senior counsel also relies on an order passed by a Division Bench of this court in ***K.RAMA MOHANA RAO & CO. vs. UNION OF INDIA***[1].

4. Having considered the submissions of the learned senior counsel for the petitioner, at the outset we are not inclined to entertain the writ petition at this stage, as admittedly the petitioner has an effective alternative remedy.

5. With regard to contention of learned counsel for the petitioner that the amended provision has no application, we do not wish to express any opinion at this stage, as this court, in the very order relied on by the learned senior counsel, had given liberty to the petitioner therein to raise the same before the Tribunal.

Inasmuch as in the present case, the appeal against the impugned order lies to the Commissioner (Appeals), petitioner is at liberty to raise the issue before the appellate authority.

6. In the circumstances, the writ petition is disposed of, leaving it open to the petitioner to avail the remedy available under the Act, by raising all the contentions it seeks to urge before this court.

7. No order as to costs.

8. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAM,J

DATE:19—08—2015

AVS

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[1] 2015(321) E.L.T. 195 (A.P.)