THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.25693 AND 30942 OF 2015

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

WP.No.25693 of 2015 is filed questioning the proceedings dated 23.06.2015 issued by the Commissioner of Customs (third respondent) rejecting the petitioner's appeal. WP.No.30942 of 2015 is filed questioning the summons dated 31.08.2015 and 02.09.2015 issued by the first respondent.

The petitioner had preferred an appeal to the Commissioner against the order passed by the Superintendent, Vijayawada on 23.03.2015 calling upon them to pay service tax on the value of the services rendered during the financial year 2014-15, along with applicable interest and penalty, and to report compliance. The petitioner preferred the appeal which was rejected by the Commissioner on the ground that the proceedings of the Superintendent, Vijayawada dated 23.03.2015 could not be treated as a show cause notice or order, as it has not been issued by the competent authority under Sections 73 and 84 of the Finance Act, 1994 ("the Act" for brevity), which was preliminarily asking the appellant for tax compliance but not in adjudicating under Section 85(1) of the Act; and ends of justice would be met if the lower authority would take proper action in accordance with law.

Sri E.Manohar, learned Senior Counsel appearing on behalf of the petitioner, would submit that, instead of adjudicating whether an appeal is maintainable against the proceedings of the Superintendent, Central Excise dated 23.03.2015, it would suffice if the respondents are directed to issue a show cause notice, and pass an adjudication order within a specified time frame as the petitioner is interested only in having their claim, that they are not liable to pay service tax, adjudicated at the earliest.

Sri Gopala Krishna Gokhaley, learned Standing Counsel for Central Excise, would submit that the matter is under investigation, and as the respondents are entitled to issue a show cause notice within 1 ½ years from the date on which service tax liability arises, a reasonable time be granted for them to issue a show cause notice; and, thereafter, to pass an order in accordance with law.

As both counsel are in agreement that a time frame be fixed for a show cause notice to be issued, and an adjudication order to be passed thereafter, we consider it appropriate to dispose of both the Writ Petitions directing the Commissioner, Central Excise and Service Tax, Guntur to issue a show cause notice to the petitioner at the earliest, in any event not later than three (3) months from today. The petitioner shall, within one (1) month thereafter, furnish their reply to the show cause notice. The Commissioner shall, within one month after receipt of the reply from the petitioner herein, pass an adjudication order in accordance with law. We have no reason to doubt that the petitioner shall co-operative in the early completion of investigation.

Both the Writ Petitions are disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in both the Writ Petitions shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

28th December 2015

RRB