THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION NO.36488 OF 2015

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ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

The proceedings under challenge in this Writ Petition is a show cause notice issued by the Commissioner of Customs, Central Excise & Service Tax, Hyderabad dated 19.10.2015, calling upon the petitioner herein to show cause why a sum of Rs.54,60,609/- should not be demanded from them, in terms of the proviso to Section 73(1) of the Finance Act, 1994, towards service tax payable on the taxable services rendered under the category of 'club or association' service provided during the period from 2010-11 to 2014-15, and to pay interest and penalty thereon.

Sri R. Raghunandan, Learned Senior Counsel appearing on behalf of the petitioner, would draw attention of this Court to the petitioner's letter dated 06.09.2015 wherein reference was made to the judgments of the Jharkand and Gujarat High Courts wherein it was held that service tax was not leviable on an association, for services rendered by them to their members, based upon principle of mutuality. Learned Senior Counsel would also draw our attention to the concluding part of the show cause notice wherein the Commissioner has stated that reliance, for issue of the show cause notice, was based, among others, on the letter dated 06.09.2015 issued by the petitioner association. Learned Senior Counsel would submit that, since the Commissioner has issued a show cause notice after referring to the petitioner's letter dated 06.09.2015, wherein reference is made to the judgments of the Jharkand and Gujarat High Courts, no useful purpose would be served by submitting a reply to the show cause notice, as the Commissioner has evidently made up his mind to subject the petitioner-society to tax on services allegedly rendered by them to their own members.

While the submission of Sri R. Raghunandan, Learned Senior Counsel, cannot be said to be without merit, we must also bear in mind that the proceedings, which is subjected to challenge in this Writ Petition, is a show cause notice issued by the Commissioner of Customs, Central Excise and service tax; the petitioner is entitled to file its reply thereto; and the Commissioner is required to consider the reply, submitted by the petitioner, and thereafter pass a reasoned order in accordance with law.

In view of the apprehension expressed, on behalf of the petitioner, by Sri R. Raghunandan, Learned Senior Counsel, we permit the petitioner to submit their reply to the show cause notice within fifteen days from today, enclosing thereto the judgments of the Jharkand High Court in **Ranchi Club Ltd. v. Chief Commissioner of Central Excise & Service Tax** and the judgment of the Gujarat High Court in **Sports Club of Gujarat Ltd. v. Union of India**. We have no reason to doubt that the Commissioner shall consider the reply submitted by the petitioner to the show cause notice, both the aforementioned judgments of the Jharkand and Gujarat High Courts, and any other judgments which the petitioner may choose to rely upon; and, thereafter, pass a reasoned order in accordance with law. We, however, see no reason to interfere at this stage as the petitioner has merely been asked to show cause.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 16.11.2015.

Note: Issue coy in two days.

B/o

MRKR