***HON'BLE SRI JUSTICE G.CHANDRAIAH**

&

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+W.P. No. 12350 of 2015

%26-06-2015

M/s. Ventrapathi Financial Services ….Petitioner

Vs.

$ The Superintendent of Central Excise
and four others …. Respondents

!Counsel for the Petitioner: Sri T. Vinod Kumar

Counsel for the Respondents: Dr.Sri K.Manmadha Rao, SC for Income-Tax

<Gist :

>Head Note:

? Cases referred:

_
_
_
_
O R D E R:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This writ petition is filed seeking to set aside the Adjudication Order dated 30.05.2014 passed by the 3rd respondent-Joint Commissioner under the provisions of Central Excise Act as adopted for the purpose of collection of service tax notified under the Finance Act, 2013 on the ground that notice preceding passing of final order was not served on the petitioner thereby the petitioner was deprived of an opportunity to put forth their grievance on merits of the matter.

The brief facts of the case are that the petitioner-firm is a service provider and the address provided by them to the Department is Door No.46-16-14/2, Panduranga Street, Danavaipeta, Rajahmundry which is mentioned in Form ST-2, certificate of registration granted under Section 69 of the Finance Act, 1994. The fact of final order having been passed by the 3rd respondent came to the knowledge of the petitioner only when the banker having received recovery notice dated 01.04.2015 communicated the same to the petitioner through letter dated 09.04.2015. Thereafter, the petitioner caused enquiry and came to know that the impugned order was passed on 30.05.2014 and obtained the same from the authorities. The petitioner also submitted that the letter

dated 15.04.2015 addressed to the Assistant Commissioner and another letter dated 17.04.2015 to the Commissioner specifically set out that the show cause notice dated 10.10.2013 which is mentioned in the impugned order was never delivered to the petitioner, and further, the order dated 30.05.2014 was also not received by the petitioner. The petitioner also pointed out that both in the show cause notice dated 10.10.2013 and in the final order dated 30.05.2014, the address mentioned is M/s.Ventrapati Financial Services, Proprietor of Shri Hari Krishna Kishore Ventrapati,
D.No.46-16-4, Danavaipeta, Rajahmundry – 533103. On the face of it, the address mentioned in the final show cause notice as well as the final order is entirely different from the address under which the petitioner-firm was registered.

The respondents have filed counter affidavit stating that the petitioner is taking undue advantage of mismatch in the address mentioned. And as a matter of fact, the petitioner was aware of the issuance of the show cause notice as well as passing of the final order and if at all the petitioner-firm is aggrieved by the order dated 30.05.2014, they are required to exhaust the remedy of appeal as may be available to them under the provisions of Finance Act, and pray to dismiss the writ petition.

Heard Sri T. Vinod Kumar, learned counsel for the petitioner and Sri Dr.K.Manmadha Rao, learned Standing

Counsel for the Central Excise and Customs Department and perused the material placed on record.

The learned counsel for both the parties have reiterated their respective stands as set out in their pleadings.

The learned counsel for the respondents has filed Form ST-2 under which registration was granted to the petitioner and the same reveals address of the petitioner as 46-16-14/2, Panduranga Street, Danavaipeta, Rajahmundry. According to the respondents, the show cause notice dated 10.10.2013 which was said to have been dispatched to the petitioner was returned unserved with an endorsement “refused”. A close of scrutiny of zerox copy of the envelop containing the notice reveals that the address mentioned thereon is 46-16-4, Danavaipeta, Rajahmundry-533 103. Likewise, the very show cause notice dated 10.10.2013 which is field by the petitioner also reveals the address as 46-16-4, Danavaipeta, Rajahmundry. In the same manner, the final order dated 30.05.2014 also bears the address 46-16-4, Danavaipeta, Rajahmundry which is different from the address registered with the Department. Apart from this, in the letters dated 18.07.2013 and 18.09.2013 of the respondents-authorities, which have been filed by the learned Standing Counsel for the Department, the address mentioned is the same as is found in the certificate of registration which is in fact correct address.

In other words, it cannot be said that the Department was not aware of the correct address of the petitioner and it is an admitted fact that both the show cause notice and final order were dispatched to the wrong address resulting in violation of the statutory requirement of service notice for the purpose of fastening liability of service tax on the petitioner. The procedure of service of notice and passing orders as enumerated in the Central Excise Act, 1944 has been made part of the service tax by virtue of Section 83 of the Finance Act. For the purpose of clarity, Section 37(C) of the Central Excise Act, 1994 as well as Section 83 of the Finance Act may be noticed as under:

> "**Section 37(C)**:- Service of decisions, orders, summons, etc. – (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served
>
> a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgement due [or by speed post with proof of delivery of by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to the person for whom it is intended or his authorized agent, if any;
>
> b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
>
> c) if the decision, order, summons or notice cannot be served in the manner provided in clauses(a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.
>
> **Section 83:-** Application of certain provisions of Act 1 of 1944:

> The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:-
> [9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, [31, 32, 32A to 32P (both inclusive),] 33A, 34A, 35EE, 35F, 35FF to 35-O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

From the facts of the present case, it is seen that there is non-compliance of the statutory provisions by the 3rd respondent in passing the order of best judgment assessment on the petitioner apart from violation of principles of natural justice.

In that view of the matter, the impugned order dated 30.05.2014 cannot be sustained, and accordingly, the same is set aside giving liberty to the respondents-authorities to pass appropriate orders after giving an opportunity of hearing to the petitioner. Considering the fact that the order passed has been set aside for non-compliance of the statutory provisions, and as on today, the petitioner has already been served with show cause notice, this Court feels that interest of justice would be served if a specific time-frame is made to complete the hearing as well as passing appropriate orders. In that view of the matter, the respondents-authorities shall conclude the entire exercise within a period of three months from the date of receipt of a copy of this order. It is made clear that in the event the petitioner-firm desires to submit any further information, they may do so within a period of four weeks from today. This order, however, shall not be construed as expressing any opinion on merits of the case. It is left open to the petitioner to take all legal objections if any including the limitation for filing such objections and the same shall be considered in accordance with law.

With the above observations, this writ petition is allowed. No order as to costs.

As a sequel to the allowing of the writ petition, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

26.06.2015

CHALLA KODANDA RAM,J

Note: L.R. copy to be marked

b/o

bcj