IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.7211 of 2015
Date of decision:30.07.2015

Ajay Yadav

....Petitioner

Versus

Union of India & another

......Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.

Mr.Sunish Bindlish, Advocate, for the respondents.

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S.J.Vazifdar, Acting Chief Justice (Oral):

1. The petitioner has challenged the order dated 16.10.2014 (Annexure P16), passed by the Commissioner, Central Excise, Delhi-I, confirming the demand of service tax amounting to about ₹5.21 crores, for the period 2011-12, together *inter alia* with interest and penalty.

2. The petitioner contends that he did not carry on any work which attracted service tax during the period 2011-12. The petitioner relies *inter alia* on the certificate issued by the Housing Board, Haryana, confirming that the works allotted by the Housing Board had been completed by the petitioner by 31.05.2009, i.e., before the relevant accounting year.

3. The respondents, however, contend that the petitioner did not submit the details of the service rendered during that period.

4. The petitioner is, therefore, actually penalised for not having proved the negative. It is true that the petitioner could have produced his books of account which would show the absence of any business activity. However, the respondents never sought his books of account in order to contend that the

petitioner refused to produce the books of account, though asked for. Reliance upon the communication dated 09.07.2012 (Annexure P9) is of no assistance to the respondents. Vide that communication, the respondents called upon the petitioner to furnish the details of any account of which he had not been paying the service tax. It is possible that the petitioner did not quite understand what was meant by this request.

5. Be that as it may, Mr.Goyal states that the petitioner is willing to furnish any document(s) pertaining to his business activities, whether the same attracts service tax or not, if called upon.

6. Considering the facts of this case, we are of the view that the petitioner must be afforded an opportunity of producing the relevant document(s) in support of his case.

7. The petition is, therefore, disposed of by setting aside the impugned order dated 16.10.2014 (Annexure P16) and the matter is remanded for fresh consideration. The petitioner shall be entitled to rely upon any further document or evidence. The statement on behalf of the petitioner that he will produce any document(s) pertaining to any of his business activities, irrespective of whether it attracts service tax or not, if called upon by the respondents, be complied with. Failure to do so would entitle the respondents to draw an adverse inference. It is clarified that this order is entirely without prejudice to the rights of the parties including the legal contentions as regards on whom the onus lies and on whom the burden of proof lies.

(S.J.Vazifdar)
Acting Chief Justice

30.07.2015 **(G.S.Sandhawalia)**
sailesh **Judge**