IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.12310 of 2016
and
W.M.P.No.10641 of 2016

A to Z Services
Rep by its Proprietor
B.Subbulakmi
No.234/1, Prithivi Plaza
NKN Nagar, Perumal Main Road
Salem - 636 005. .. Petitioner

..Vs..

The Commissioner
Office of the Commissioner of
Central Excise
No.1, Foulks Compound
Anai Medu, Salem - 636 001. .. Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the impugned show cause notice dated 25.02.2016 in C.No.V/C&F/30/87/2015-ST.Adj issued by the respondent and quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Sathyaraj

For Respondent : Mr.V.Sundareswaran, S.S.C.,

ORDER

Heard Mr.B.Kumar, learned Senior Counsel assisted by Mr.S.Sathyaraj, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the respondent and with the consent of either side, the writ petition is taken up for final disposal.

2.The present writ petition has been filed challenging the notice dated 25.02.2016, wherein the respondent has called upon the petitioner to appear and explain with records with regard to the Service Tax liability. It is the endeavor of the learned Senior Counsel to point out that in paragraph 7 of show cause notice, the documents which has been relied upon has been set out and the invoices for the period from April 2014 to July 2014 would clearly be sufficient for the authority to appreciate and hold that there is no liability on the petitioner. Further, it is stated that the demand of service tax itself is without jurisdiction and not in consonance with the departmental circulars issued, especially the circular dated 21.12.2007.

3.Further, by referring to Section 67(2) of the Finance Act, it is submitted that the said provision sets out the procedure for computation of value of the taxable services on which service tax is payable and the respondent has not considered these aspect while issuing the demand/show cause notice. But the respondent has calculate the service tax on the basis which is neither supported by the Finance Act nor by Article 265 of the Constitution of India.

4.The learned Senior Counsel for the petitioner referred to the decision of the Hon'ble Supreme Court made in the case of Commissioner v. Advantage Media Consultant - 2009 (14) STR J49 (SC), wherein it has been held that the total receipts for rendering services should be treated as inclusive of Service Tax due to be paid by ultimate customer unless Service Tax was paid separately by customer.

5.From the counter affidavit it is seen that the respondent have only issued a notice and called for the petitioner's objections and they undertake to pass a reasoned order, after hearing the petitioner.

6.In the light of the above facts, the question of setting aside the impugned proceedings would not arise at this stage, as it is only a show cause notice. Therefore, the appropriate procedure to be adopted by the petitioner is to respond to the notice by submitting their reply and appearing before the authority in person.

7.Accordingly, while rejecting the prayer sought for and dismissing the writ petition, liberty is granted to the petitioner to submit their objections within a period of two weeks from the date of receipt of a copy of this order, after which the respondent shall fix a date for personal hearing, hear the petitioner, consider all the issues and pass a speaking order on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

pgp

To

The Commissioner
Office of the Commissioner of Central Excise
No.1, Foulks Compound
Anai Medu, Salem - 636 001.

+2cc to M/s. S. Satharaj, Advocate, S.R.No.31287
+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.31158

SVI(CO)
EU(21/06/2016)

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