IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.14737 of 2016
and
W.M.P.No.12875 of 2016

M/s.Sree Daksha Property Developers
No.1, Gandhi Layout
1st Floor, Sree Veeras Towers
Maruthamalai Road, Vadavalli
Coimbatore - 641 046.
Rep by R.Mohan,
Managing Director and Authorised Signatory .. Petitioner

..Vs..

The Commissioner of Central Exercise
6/7, ATD Street, Race Course
Coimbatore - 641 018. .. 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 comprised in Order C.No:V/CRCS/15/137/2014-ST Adj date 14.3.2016 on the file of the respondent and quash the same.

For Petitioner : M/s.S.Durairaj

For Respondent : Mr.A.P.Srinivas, Standing Counsel

ORDER

Heard Ms.Naveena.D, learned counsel appearing for the petitioner, and Mr.A.P.Srinivas, learned counsel appearing for the respondent and with their consent, the writ petition itself is taken up for final hearing.

2.This writ petition has been filed challenging the order passed by the respondent under Section 74 of the Finance Act where the petitioner has sought for rectification in the quantification of the Service Tax demanded. The petitioner was issued a show cause notice on 16.10.2015, wherein the authority had called upon the petitioner to show cause as to why the service rendered by them should not be assessed to tax under Sections 65(105)(zzzza), (zzza) of the Finance Act 1994; The extended period of time available under the first proviso to Section 73(1) of the Finance Act, 1994 should not be invoked in this case; Consequently, an amount of Rs.2,95,40,927/- (Rupees Two Crores Ninety Five Lakhs Forty Thousand Nine Hundred and Twenty Seven only) [Service Tax:Rs.2,86,80,512/=; Education Cess: Rs.5,73,610/- and Secondary & Higher Education Cess: Rs.2,86,805/-] should not be demanded from them in terms of Section 73 of the Finance Act, 1994; an amount of Rs.1,59,685/- (Rupees One Lakh Fifty Nine Thousand six Hundred and Eighty Five Only) [St: Rs.1,55,034/-, Edu. Cess:Rs.3,101/- and SHEC: Rs.1,550/-] paid by them and shown in their ST3 return for the period from 01.04.2009 to 30.09.2009 should not be appropriated against the above demand; Appropriate interest should not be demanded from them in terms of Section 75 of the Finance Act, 1994; and Penalties should not be imposed on them under Sections 77(1), 77(2) and 78 of the Finance Act, 1994.

3.The petitioner submitted their reply to the show cause notice raising various pleas both factually and legally. Thereupon, the matter was taken up for adjudication and the respondent passed an order dated 31.12.2015. Thereafter, the petitioner filed an application for rectification of the mistake under Section 74 of the Act on 09.03.2016. In the said application, the petitioner contended that they had requested for excluding the value of the goods, by placing reliance on the decision of the Delhi High Court in the case of GD Builders vs. Union of India - 2013 (32) STR 673 (Del.). However, the said decision was not considered and the demand was made on the value of the goods.

4.Further, it was contended that alternatively they have given their option under Rule 3(3) of Works Contract (Composition scheme for payment of service tax) Rules, 2007 and the said option was rejected without relying on the statutory provisions. By raising the above grounds, the petitioner sought for rectifying the mistake and the same has been rejected by the respondent by the impugned order.

5.A bare perusal of the petition for rectification would reveal that the petitioner seeks for re-arguing the matter before the authority or question the interpretation given by the authority for not granting the relief sought for. This would not fall within the scope of the power to be exercised under Section 74 of the Finance Act. Therefore, the authority was justified in refusing to exercise such power.

6.Accordingly, the writ petition fails and the same is dismissed. However, it is always open to the petitioner to file an appeal before the CESTAT and in the event, the petitioner exercising such option, the CESTAT while computing the limitation shall consider excluding the period during which the present writ petition is pending while computing the time limit for filing the appeal i.e., from 18.04.2016. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

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To

The Commissioner of Central Exercise
6/7, ATD Street, Race Course
Coimbatore - 641 018.

+1 cc to Mr.A.P.Srinivas Advocates sr.30754

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