IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.28470 of 2015
and
M.P.No.1 of 2015

C.Subramanian ... Petitioner

Vs.

1. The Assistant Commissioner of Central Excise,
Office of the Asst.Commissioner of Central Excise,
Cuddalore Division No.1,
Vallalar Nagar, Manjakuppam,
Cuddalore-607 001

2. The Chief General Manager(Finance),
Corporate Office,
Neyveli Lignite Corporation,
Neyveli, Cuddalore District ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records in C.No.IV/16/STC/137/2011 dated 19.08.2015 on the file of the first respondent herein and quash the same and direct the 2nd respondent Corporation to pay interest on the service tax amount paid belatedly by the 2nd respondent Corporation without deducting any amount towards interest from the bill amount payable to the petitioner by the 2nd respondent Corporation.

For Petitioner : Mr.S.Sadasharam

For Respondents : Mr.A.P.Srinivas,SPC for R1
Mr.F.B.Benjamin George for R2

ORDER

Heard Mr.S.Sadasharam, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing counsel, who accepts notice for the first respondent and Mr.F.B.Benjamin George, learned counsel, who takes notice for the second respondent and with the consent of the parties, the writ petition itself is taken up for final disposal.

2.The petitioner is a registered contractor of Neyveli Lignite Corporation and he has challenged the notice of demand, issued by the first respondent under Section 87(b)(i) of the Finance Act, 1994, addressed to the second respondent, with a copy marked to him.

3. The writ petitioner is a defaulter in payment of service tax, having not cleared the entire arrears, as ordered to be paid in the Order-in-Original No.30 of 2010, dated 18.1.2010. Therefore, treating the second respondent/Neyveli Lignite Corporation as a garnishee, the impugned notice of demand has been issued. Since the petitioner has not challenged the Oder-in-Original No.30 of 2010, dated 18.1.2010, the question of challenging the impugned demand notice does not arise.

4. The learned counsel for the petitioner, on instructions, submitted that a sum of Rs.8 lakhs have been recovered from the petitioner, during the pendency of the writ petition, by Neyveli Lignite Corporation.

5. In the light of the above, the challenge to the impugned notice of demand has to necessarily fail and accordingly, the writ petition is dismissed. However, if it is the case of the petitioner that in terms of the agreement between him and the second respondent there are certain avenues open and that the Neyveli Lignite Corporation alone has to pay the service tax, it is open to the petitioner to work out his remedies, by approaching the second respondent. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Assistant Commissioner of Central Excise,
   Office of the Asst.Commissioner of Central Excise, Cuddalore Division No.1,
   Vallalar Nagar, Manjakuppam,
   Cuddalore-607 001

2. The Chief General Manager(Finance),
   Corporate Office,
   Neyveli Lignite Corporation,
   Neyveli, Cuddalore District.

+1cc to Mr.F.B.Benjamin George, Advocate, S.R.No.40942
+1cc to Mr.S.Sadasharam, Advocate, S.R.No.41231

W.P.No.28470 of 2015

PVS(CO)
CA(16/08/2016)