IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2016
Delivered on : 20.04.2016

Dated : 20.04.2016

CORAM:

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.34647 & 35521 of 2015
and
M.P.Nos.1 & 2 and 1 & 2 of 2015

Ajay Kumar Bishnoi
Director, Tecpro Systems Limited
Tecpro Towers, 11-A17, 5th Cross Road,
SIPCOT IT Park,
Siruseri, Chennai – 603 103, TN.
...Petitioner in W.P.35521/2015

Amul Gabrani
Director, Tecpro Systems Limited
Tecpro Towers, 11-A17, 5th Cross Road,
SIPCOT IT Park,
Siruseri, Chennai – 603 103, TN.
...Petitioner in W.P.34647/2015

Vs.

The Union of India
rep by the Senior Intelligence Officer,
Directorate General of Central Excise Intelligence,
Ministry of Finance,
West Block – VIII, Wing No.3,
1st Floor, Sector – 1, RK Puram,
New Delhi – 110 066. ... Respondent in both W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records and to quash the summons issued by the respondent to the petitioners dated 30.10.2015 and 27.10.2015 vide F.No.DZU/IV/J/ST/59/2015 under Section 14 of the Central Excise Act, 1944 r/w Section 83 of the Finance Act, 1994 as being invalid in law.

For Petitioner (in both W.Ps) : Mr.Vaibhav R.Venkatesh

For Respondents (in both W.Ps) : Mr.T.Chandrasekar, C & CE

COMMON ORDER

Since the issues involved in both the Writ Petitions are identical, by consent of both the learned counsel, both the matters are disposed of by this common order.

2.The petitioners have filed the above Writ Petitions to issue writs of certiorari to call for the records and to quash the summons issued by the respondent to the petitioners dated 30.10.2015 and 27.10.2015 under Section 14 of the Central Excise Act, 1944 r/w Section 83 of the Finance Act, 1994.

3.The petitioners are the Directors of M/s.Tecpro Systems Limited. M/s.Tecpro Systems Limited is registered with Service Tax at New Delhi for providing taxable services. On 30.03.2015, the office premises of M/s.Tecpro was searched on the basis of specific information that the Company has been collecting Service Tax from their customers, but not been depositing the same with the Government Exchequer. The respondent sent summons to the petitioners, under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, dated 30.10.2015 and 27.10.2015 calling upon the petitioners, to appear for an enquiry on 29.102.105 and 06.11.2015 at New Delhi. According to the petitioners, the impugned summons were overfilled with vagueness and ambiguity, without assigning any proper reasons for issuing the summons or explaining why enquiry is being conducted or stating what documents are to be produced or giving two weeks or fifteen days through advance notice as mandated by law to enable production of Schedule mentioned documents etc. According to the petitioners, the respondent has not given the details of the documents to be produced by the petitioners.

4.The respondent contended that the Company was found to have shifted the operations from Delhi to Chennai without intimating the Department. Further, most of the financial records were not found in the Registered Office of the Company when the search was conducted on 30.03.2015, which was reported to have been shifted to Chennai office. From the records resumed from the Office of the party, it was found that the Company had an outstanding Service Tax liability of Rs.17.38 crores as on 31.03.2014, therefore, the investigations under the provisions of Finance Act was initiated against the Company. The petitioners appeared before the Director General of Central Excise Intelligence, Delhi Zonal Unit Office on 20.04.2015. In response to the summons issued under Section 14 of the Central Excise Act as made applicable to the Service Tax matters vide Section 83 of the Finance Act, 1994, the petitioners tendered their voluntary statements wherein they admitted the non-payment of Service Tax by the Company. They also undertook to discharge the outstanding Service Tax liability shortly. Further, the petitioners also undertook to furnish the documents in connection with the investigation. According to the respondent, the investigation in the matter could not be carried forward because of the non-cooperation of the parties. The summons dated 27.10.2015 and 30.10.2015 were issued to the petitioners as part of the on-going investigation proceedings. Further, according to the respondent, the Company has not paid the Service Tax regularly since 2013-14 inspite of the fact that they continue to provide taxable services on which they were liable to pay Service Tax.

5.Mr.Vaibhav R.Venkatesh, learned counsel appearing for the petitioners submitted that since the summons issued by the respondent were vague, the same are liable to be quashed and the respondent may be directed to issue fresh summons with all details. In support of his contentions, the learned counsel relied upon a judgment reported in (1972) 1 Supreme Court Cases 240 [Barium Chemicals Ltd and another Vs. A.J.Rana and others] wherein the Hon'ble Supreme Court held as follows:

> "The order under the above provision of law is addressed to the person, who is either in possession of requisite information, book or other document or is, in the opinion of the authority concerned, able to obtain and furnish such information, book or other document. For compliance with such an order, it is imperative that the person against whom the order is directed should be left in no doubt with regard to the precise information, book or other document which is required to be furnished by him. It, therefore, becomes essential that the requisite information, books or other document should be specified in the order."

6.Mr.T.Chandrasekar, learned counsel appearing for the respondent submitted that when the petitioners have given voluntary statements admitting the non-payment of Service Tax by the Company and having given an undertaking to discharge the outstanding Service Tax liability, at this stage, they cannot now take a stand that the summons issued by the respondent are vague and are liable to be set aside. Further, the learned counsel also submitted that the petitioners having appeared before the respondent for investigation, pursuant to the summons issued by the respondent on 27.10.2015 and 30.10.2015, they cannot now take a stand that the summons are bad.

7.On a perusal of the statements made by the petitioners, it is clear that they have specifically admitted the non-payment of Service Tax by the Company and they also undertook to discharge the outstanding Service Tax liability shortly. The statements were made by the petitioners pursuant to the summons issued by the respondent on 27.10.2015 and 30.10.2015. Having given such voluntary statements before the respondent, the petitioners cannot now take a stand that the summons are vague and they are liable to be set aside. It is also pertinent to note that the petitioners have appeared before the respondent for enquiry pursuant to the summons issued and explained their case before the respondent. The petitioners could have produced all the relevant records before the respondent and made their submissions, instead, after giving voluntary statements admitting the non-payment of the Service Tax and giving an undertaking to discharge the outstanding Service Tax liability, they cannot seek for quashing of the summons. It is open to the petitioners to produce all the relevant records before the respondent and file their objections and contest the matter in accordance with law. For the reasons stated above, I do not find any error in the summons issued by the respondent. Since the facts and circumstances differs from the case on hand, the judgment relied upon by the learned counsel for the petitioners is not applicable to the present case.

8.In these circumstances, the Writ Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

va

To

The Senior Intelligence Officer,
Union of India,
Directorate General of Central Excise Intelligence,
Ministry of Finance,
West Block - VIII, Wing No.3,
1st Floor, Sector - 1, RK Puram,
New Delhi - 110 066.

+2cc's to Mr.Nithyaeash and Vaibhav, Advocate, S.R.No.24447
+2cc's to Mr.T.Chandrasekar, Advocate, S.R.Nos.24163 & 54164

W.P.Nos.34647 & 35521 of 2015
and M.P.Nos.1 & 2 and 1 & 2 of 2015

KS(CO)
CA(28/04/2016)