IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.39082 of 2015 &
M.P.No.1 of 2015

Lanco Tanjore Power Company Ltd.
(Formerly Known as Aban Power Company Ltd.)
Rep. by its Chief Financial Officer
S.Kathir Kamanathan
No.25 GN Chetty Road
T. Nagar
Chennai-17. .. Petitioner

1 Commissioner of Service Tax-II
Newry Towers
Plot No.2054-1, 12th Main Road
II Avenue, Anna Nagar
Chennai-600 040.

2 Superintendent of Central Excise (Rage 87)
Service Tax Division XVIII
Service Tax Commissionerate Delhi IV
CR Building I P Estate
New Delhi 110002. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the 1st Respondent in proceedings C.No. IV/09/123/2015-STC-II (Adj.) in Show Cause Notice No.77/2015, dated 15.10.2015 and to quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.V.Sundareswaran
Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records on the file of the first respondent pertaining to the Show Cause Notice No.77/2015, dated 15.10.2015 and to quash the same.

2. The petitioner has challenged the show cause notice dated 15.10.2015 in this writ petition. The main contention of the petitioner is that General Electric International Inc, USA, has an Indian Branch Office in Gurgaon known as General Electric International Inc. The Indian Branch Office of GE, USA situated in Guregaon has rendered the services to the petitioner in India. Further, according to the petitioner, General Electric International Inc, had obtained service tax registration in India and New Delhi in the very same name, viz.,General Electric International Inc, Further, the petitioner has stated that GE, Gurgaon, who is the service provider, had discharged the liability by paying the service tax so collected to the 2nd respondent-service tax authority. That apart, the petitioner also contended that the petitioner is only a service receiver and not a service provider. In these circumstances, the petitioner contended that the show cause notice issued by the first respondent dated 15.10.2015 is erroneous and liable to be set aside.

3. Mr.Joseph Prabakar, learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court in the judgment reported in 2007(218) ELT 647 (SC) [Union of India v. Vicco Laboratories] held that where a show cause notice is issued either without jurisdiction or in an abuse of process of law, the writ court would not hesitate to interfere even at stage of issuance of show cause notice.

4. In the case on hand, according to the first respondent, the petitioner is liable for payment of service tax. However, contrary to the stand taken by the first respondent, petitioner contended that they are only service receiver and not service provider liable for service tax.

5. The respondents in their counter has stated that by Notification No.30/2012-ST, dated 20.06.2012, issued under section 68(2) of the Act, which came into effect on and from 01.07.2012, notified the recipient of service as the person liable to pay the entire service tax amount in respect of any taxable services provided or agreed to be provided by any person, who is located in a non-taxable territory and received by any person located in the taxable territory.

6. Mr.V.Sundareswaran, learned Standing Counsel, appearing for the respondents submitted that since the first respondent had issued only a show case notice, the writ petition filed by the petitioner is not maintainable and the petitioner can be given liberty to file their explanation along with all the documents before the first respondent enabling the first respondent to decide the matter.

7. Admittedly, the petitioner has not given their explanation to the show cause notice dated 15.10.2015 issued by the first respondent sofar. If the petitioner gives their explanation and submit all the documents in support of their contention, then only, the first respondent will be in a position to decide the matter. The impugned notice is only a show case notice and it is not an order passed by the first respondent. Without filing their explanation and producing the necessary documents to substantiate their case, the first respondent will not be in a position to decide the matter in accordance with law.

8. The ratio laid down by the Hon'ble Supreme Court in the the judgement reported in 2007(218) ELT 647 (SC) [cited supra] shall not apply to the facts and circumstances of the present case for the reason that when the first respondent has stated that the petitioner is liable for service tax, it is for the petitioner to explain their contention by producing all the records before the first respondent stating that they are not liable for payment of service tax.

9. In these circumstance, I am of the view that the petitioner can be given a reasonable time for filing their explanation to the show cause notice dated 15.10.2015 raising all their objections and also all the documents to substantiate their contention.

10. Accordingly, I give liberty to the petitioner to file their objections to the show cause notice issued by the first respondent dated 15.10.2015, within a period of four weeks, from the date of receipt of a copy of this order and the first respondent is directed to consider the explanation given by the petitioner and the documents to be produced by the petitioner with an open mind and decide the matter on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

11. In these circumstances, I do not find any merit in the writ petition and the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Rj

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1 The Commissioner of Service Tax-II
Newry Towers
Plot No.2054-1, 12th Main Road
II Avenue, Anna Nagar
Chennai-600 040.

2 The Superintendent of Central Excise (Rage 87)
Service Tax Division XVIII
Service Tax Commissionerate Delhi IV
CR Building I P Estate
New Delhi 110002.

+ 1 cc to Mr.V.Sundareswaran Advocate, SR 14586

+ 1 cc to Government Pleader, High Court, Madras SR 14414

ksj(co)
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