IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.22272 of 2016
and
W.M.P.No.19004 of 2016

Tamil Nadu Slum Clearance Board
Rep by its Chairman
No.5, Kamarajar Salai
Chennai - 600 005. .. Petitioner

..Vs..

1.Union of India
Rep by its Secretary
Ministry of Finance
(Department of Revenue)
Room No.46, North Block
New Delhi - 110 001.

2.The Director
Tax Research Unit
Central Board of Excise & Customs
No.146-F, North Block
New Delhi

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

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Prohibition prohibiting the 3rd respondent Commissioner from proceeding further with impugned statement of Demand No.49/2016 dated 11.05.2016 bearing reference No.IV/09/74/2016-STC.II (Adj.) against the petitioner.

For Petitioner : Mr.C.Saravanan

For Respondents : Mr.A.P.Srinivas

ORDER

Heard Mr.C.Saravanan, learned counsel for the petitioner and Mr.A.P.Srinivas, learned counsel appearing for the respondents and with the consent of either side, the writ petition is taken up for final disposal.

2.The petitioner is the Tamil Nadu slum Clearance Board which is a statutory body established under the provisions of the Tamil Nadu Slum Areas (Improvement & Clearance) Act, 1971, an Act to provide for improvement and clearance of slums in the state of Tamil Nadu.

3.In this writ petition, the petitioner Board has challenged the statement of demand issued by the third respondent, demanding service tax for the period from 2010-11 to 2013-14 on renting and construction. The petitioner's case is that they have challenged Section 65(90a) of the Finance Act, 1994 as amended by Finance Act, 2007 as invalid and unconstitutional in W.P.No.8932/2011. Apart from that, the petitioner had filed writ petitions in W.P.No.26012/2012 as well as other writ petitions being W.P.Nos.35067 & 35068/2015 and W.P.No.4253/2016. In the cases where the petitioner has challenged the earlier demands, interim orders have been granted. Therefore, the respondent/Service Tax Commissionerate are precluded from enforcing the demands. Apart from that, it is stated that other connected writ petitions are also pending.

4.The petitioner's primary defence appears to be that they are a statutory body incorporated under the Tamil Nadu Act 11 of 1971 and it is a "State" within the meaning of Article 12 of Constitution of India, a non-profitable body corporate incorporated to implement the directive principles of state policy enshrined under part IV of the Constitution of India and taking out various welfare measures. Further, it is submitted that the petitioner has been registered as a non-profitable organization with the Income Tax Department, Chennai and is exempted from Income Tax Assessment under Section 11 of the Income Tax Act, 1961. The pattern of funding for the petitioner is stated to be from the World Bank and this is so because the object of establishing the petitioner Board is for improving the standard of living of dwellers in slum who dwell in notified slum areas, objectionable lands and on the margin of water courses/way such ass Adyar river, Buckingham canal and Cooum River etc in Chennai city. Further, it is stated that there is no share capital and the Board functions under the grant given by the Government of Tamil Nadu and the Board neither declares dividends not has any share holders.

5.In my view, repeatedly issuing demands to the petitioner and enforcing the same would only result in the multiplicity of the proceedings which should be avoided. More particularly, when the petitioner Board has challenged the constitutional validity of the very charging provisions and the earlier demands issued from the year

2012 are also under challenge. Hence, the third respondent is directed to issue the demands for the subsequent period, but such demands shall not be enforced till the vires of the statute which is put to challenge in W.P.No.35067 & 35068/2015 and W.P.No.4253/2016 are heard and decided by this Court. The reason for permitting the third respondent to continue to issue demands is that in the event, the petitioner is unsuccessful in the other writ petitions, then at that point of time, the petitioner may raise a plea that the demand is barred by limitation.

6.With the above direction and observations, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
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(Department of Revenue)
Union of India
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Newry Towers, Plot No.2054-I
12th Main Road, II Avenue
Anna Nagar, Chennai - 600 040.

1 cc to Mr.C.Saravnan, Advocate(Sr 36531)
1 cc to Mr.A.P.Srinivas, Advocate (Sr.36619)

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gj-II(co)
pmk.23.07.2016