IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.40438 of 2015

and MP.No.1 of 2015

V.Arun,
Proprietor
M/s.VAP Cranes. ... Petitioner

Vs.

1.The Commissioner of Service Tax-I
Survey, Intelligence and Research Wing (SIR)
3rd Floor, Newry Towers, No.2054, III Avenue
Anna Nagar, Chennai-40.

2.The Assistant Commissioner of Service Tax (SIR)
Service Tax-1, Commissionerate
Office of the Commissioner of Service Tax-1
Newry Towers, No.2054, III Avenue
Anna Nagar, Chennai-40.

3.Superintendent of Service Tax
Service Tax SIR (Group-X)
3rd Floor Newry Towers, No.2054-I,
III Avenue, Anna Nagar, Chennai-40. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari to call for the records relating to the proceedings of the second respondent dated 2.11.2015 in C.No.IV/6/05/2014-STI-SIR Gr-X and quash the same.

For Petitioner : Mr.V.Rameshvel
For Respondent : Mr.A.P.Srinivas, SSC.

O R D E R

Challenging the order passed by the second respondent, dated 02.11.2015, on the ground of violation of principles of natural justice, this Writ Petition is filed.

2.The learned Senior Standing Counsel for the petitioner has filed a counter affidavit today, and submitted that, the petitioner did not file his returns and never produced any documents to the authority for consideration. The learned Senior Standing Counsel also fairly conceded that, it is now accepted by the respondent-Department that the impugned communication is nothing but a communication on the second respondent, asking the petitioner to pay the amount of service tax collected from the customers. As on today, no such recovery proceedings are initiated against the petitioner. On the other hand, the petitioner is expected to appear before the authority for participation in the adjudication proceedings. The said submission is supported in paragraph 6 of the counter affidavit, which is extracted hereunder:-

> It is submitted before this Hon'ble Court that the letter dated 02.11.2015 impugned in this writ petition is only a communication from the second respondent asking the petitioner to pay the amount of service tax collected from customers to Government Account. While doing so, the petitioner's attention was drawn to the provisions of Section 87 of the Finance Act, 1994 but no recovery proceedings have been initiated for recovering the amount indicated in the impugned communication.

3.In view of the said submission, as buttressed in para No.6 of the counter, and also to give quietus to this issue, this Writ Petition is disposed of, by directing the petitioner to participate in the adjudication proceedings, for which purpose, he shall appear before the Authority on 10th February, 2016, along with all required documents. On such appearance, the petitioner be heard by the respondents and consider the objection made by the petitioner, including the ground of limitation, and thereafter, pass appropriate orders on merits and in accordance with law. Such an exercise shall be completed within a period of four weeks from 10.02.2016. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar(Cs-VI)

/TRUE COPY/

Sub-Assistant Registrar

tsh/sd

To

1.The Commissioner of Service Tax-I
Survey, Intelligence and Research Wing (SIR)
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2.The Assistant Commissioner of Service Tax (SIR)
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3.Superintendent of Service Tax
Service Tax SIR (Group-X)
3rd Floor Newry Towers, No.2054-I,
III Avenue, Anna Nagar, Chennai-40.

+1 CC to MR.A.P.Srinivas Advocate. SR.NO.4724
+1 CC to MR.V.Rameshvel Advocate. SR.NO.4441

WP.No.40438 of 2015.

CO-AK
JD 08/02/2016