IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22977 of 2016 &
WMP No.19695 of 2016

M/s.Ayyakkannu & Co.
Rep.by its Managing Partner : Ayyakkannu
Neyveli. [PETITIONER]

Vs

1 The Commissioner of Central Excise
Chennai Audit II Commissionerate
No. 690 Anna Salai
Nandanam, Chennai.

2 The Commissioner of Central Excise
No.1 Goubert Avenue (Beach Road)
Puducherry.

3 The General Manager (Finance/Tax)
Neyveli Lignite Corporation Ltd (NLC)
Corporate Officem Neyveli.
[RESPONDENTS]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ Of Certiorari to call for the records relating to the impugned Show cause Notice No.15/2016-ST dated 21.04.2016 issued by the 1st respondent answerable to the 2nd respondent and quash the same as arbitrary, without authority of law and not sustainable in law.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.A.P.Srinivas - 1 & 2
Senior Panel Counsel

Mrs.Sweta Giridar
for Lakshmi Kumaran - R3

O R D E R

Heard Mr.K.Jayachandran, learned counsel for the petitioner, Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondents 1 & 2 and Mrs.Sweta Giridar, learned counsel, for M/s Lakshmi Kumaran, learned counsel for the third respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner has come forward with this Writ Petition, challenging the show cause notice issued by the first respondent dated 21.04.2016, calling upon the petitioner to show cause within thirty days as to why service tax amount of Rs.1,03,06,330/- being the Service tax not paid "Cleaning Service" provided for the period from 2010-11 to 2013-14, should not be demanded under the proviso under section 73(1) of the Finance Act, 1994; as to why the interest amount on the Service Tax payable mentioned above should not be demanded under section 75 of the Finance Act, 1994 and penalty under section 78(1) of the Finance Act, 1994, should not be imposed on the petitioner.

3.The petitioner's contention is that none of the activity done by them for Neyveli Lignite Corporation Ltd.(NLC), would connote 'Service' within the ambit of Finance Act, 1994, as amended. Apart from that, it is submitted that there has been series of correspondence between the Department and NLC and without reference to any of such correspondence, the impugned show cause notice has been issued. It is also contended that the show cause notice is barred by limitation and the extended period of limitation cannot be invoked in the facts and circumstances of the case.

4.When the case was heard for admission on 04.07.2016, taking note of the documents annexed in the typed set of papers, this Court passed the following order:

> "Notice for the respondents 1 and 2 is accepted by Mr.A.P.Srinivas, learned Senior Standing Counsel and notice to the third respondent through Court and privately.
>
> 2.It is seen that the respondent-Department did not initiate or call for any information from the petitioner, but addressed the third respondent and sought for details as to the nature of agreement entered into between the NLC and the petitioner. The third respondent sent a reply to the Department on 13.03.2015 and indicating the details,

> thereafter, the Department addressed NLC, by letter dated 28.07.2015, stating that the petitioner has been rendering taxable service and liable to pay service tax. However, no show-cause notice was issued to the petitioner, but a copy of the communication dated 28.07.2015 was marked to the petitioner. NLC addressed the respondent-Department on 27.07.2015 stating that how the services are not taxable, they also placed reliance on certain decisions of the other High Courts as well as Tribunals. Once again, the NLC addressed the Department on 19.10.2015, as to how the services are not taxable. However, in the impugned show-cause notice, without any reference to any of these inter-Department Communications i.e., between NLC and the first respondent-Department, the impugned show-cause notice has been issued.
>
> In the light of the above, there will be an order of interim stay. List the mater on 28.07.2016."

Even on the said hearing date, it was pointed out by the learned Standing Counsel for the respondents 1& 2 that the annexures appended to the show cause notice were not filed in the typed set of papers.

5.On a perusal of the original of the impugned order, it is seen that Annexure-I has been filed by the petitioner though not in the typed set of papers. It is the specific case of the petitioner that Annexure II was not handed over to them and in this regard, representation is said to have been given to the first respondent.

6.Be that as it may, the first respondent cannot without reference to the previous correspondence between them and the NLC dated 28.07.2015, 19.10.2015, could have issued impugned show cause notice, that apart to determine as to whether the nature of activity done by the petitioner would amount to 'service' amenable to the Finance Act, 1994, as amended, it cannot be adjudicated by the authority in the absence of NLC. Therefore, the appropriate things to be done is issue notice to the NLC also and after affording an opportunity to the petitioner and NLC to submit their objections, the first respondent should adjudicate the show cause notice.

7.Accordingly, for the present, further proceedings pursuant to the impugned show cause notice shall be kept in abeyance and the first respondent shall issue separate notices or a combined notice to the petitioner as well as to the third respondent-NLC, and after giving sufficient opportunity to the parties to submit their objections, proceed to adjudicate the matter in accordance with law, after affording an opportunity of personal hearing.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1 The Commissioner of Central Excise,
Chennai Audit II Commissionerate,
No. 690 Anna Salai,
Nandanam, Chennai.

2 The Commissioner of Central Excise,
No.1 Goubert Avenue (Beach Road),
Puducherry.

3 The General Manager (Finance/Tax),
Neyveli Lignite Corporation Ltd (NLC),
Corporate Officem Neyveli.

+1cc to M/S.Lakshmikumaran, Advocate Sr.43498
+1cc to Mr.A.P.Srinivas, Advocate Sr.43145
+1cc to Mr.K.Jayachandran, Advocate Sr.42875

W.P.No. 22977 of 2016

sr[co]
srg 17/08/2016