IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.32012/2016 & WMP.No.27761/2016

Sidney Jude Alusa,
Apt.No.4, 1st Floor,
Citadel Apartment, 1A,
Cenatoph Road, 2nd Lane
Alwarpet, Chennai-600018. ...Petitioner

Versus

1. The Joint Commissioner of Service Tax, Service Tax-I, Commissionerate Newry Towers, No.2054-1, 2nd Avenue Anna Nagar, Chennai-40.

2. The Additional Director Directorate General of Central Excise Intelligence, Chennai Zonal Unit C3, C Wing, Rajaji Bhavan, Besant Nagar, Chennai 600 090.

3. The Deputy Commissioner of Service Tax, Division III, Service Tax II, Commissionerate, Newry Towers, No.2054-1, 2nd Avenue Anna Nagar, Chennai-40. ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to the order-in-original No.62/2015-ST-I dated 16.12.2015 passed by the 1st respondent and quash the same as it was passed beyond the limitation prescribed and other provisions under section 73 of the Finance Act, 1994.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.S.R.Sundar, SCGSC

ORDER

Heard Mr.Joseph Prabakar, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Central Government Standing Counsel accepting notice on behalf of the respondents and with the consent on either side, the writ petition is taken up for final disposal.

2 The order impugned in this writ petition is an order-in-original dated 16.12.2015, in and by which, the petitioner has been directed to pay the Service Tax of Rs.17,56,520/-, being the Service Tax payable under the "Fashion Designing Services" for the period from April 2008-2009 to 2012-2013 under section 73[1] read with section 73[2] of the Finance Act, 1994 [in short, "the Act"]. Apart from that, there is a penalty of Rs.10,000/- imposed u/s.77 of the Act and a penalty of Rs.17,56,520/- that is equivalent to the Service Tax imposed on the petitioner u/s.78 of the Act. The learned counsel for the petitioner though has raised several contentions in the affidavit filed in support of this writ petition, he would fairly concede that the petitioner had not been diligent enough to contest the matter when notices were issued and he would unconditionally submit that if the petitioner is given one more opportunity, he will place all the records before the authority and the authority can take a fresh decision in the matter.

3 The learned Senior Central Government Standing Counsel appearing for the respondents pointed out the findings recorded by the Adjudication Officer in paragraph 12 of the impugned order, which pertains to the reply to the show cause notice and personal hearing. It is evidently clear that the petitioner evaded the notices issued by the Department. The conduct of the petitioner is not appreciable. If the petitioner is registered with the Department under the category "Fashion Designing Services", he being the assessee on the file of the respondent Department, should not shy away from the proceedings which is being initiated against it. Rather, it is the statutory duty cast upon the assessee to receive the notices, submit their reply and when he is directed to appear for

personal hearing, should promptly appear before the authority. However, the petitioner has failed to take note of the seriousness of the proceedings and seems to have brushed aside the repeated notices sent by the authority. However, considering the fact that the proceedings have been completed ex-parte, this Court is inclined to grant one more opportunity to the petitioner subject to certain conditions.

4 This Court, further observes that a condition, directing the petitioner to pay 15% of the Service Tax demanded, will be a condition precedent for him to once again go before the authority. The learned counsel pointed out that even for filing an appeal before CESTAT, the pre-deposit required to be made is only 7.5% and therefore, this Court should re-consider the amount payable by the petitioner, for being entitled to for a fresh opportunity. The submission of the learend counsel for the petitioner is not well founded owing to the fact that the petitioner cannot at this point of time, approach the Tribunal as the appeal would be barred by limitation. Therefore, the petitioner should abide by the condition to be imposed by this Court.

5 In the light of the above, the petitioner is directed to pay 15% of the Service Tax demanded, viz., 15% of Rs.17,56,520/-, within a period of three weeks from the date of receipt of a copy of this order and if the petitioner remits the same, he will be entitled to treat the impugned proceedings as a show cause notice and submit their objections within a period of two weeks thereafter and on receipt of the objections, the 1st respondent shall afford an opportunity of personal hearing to the petitioner or his authorised representative and re-do the assessment in accordance with law.

6 The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

AP

To

1. The Joint Commissioner of Service
   Tax, Service Tax-I, Commissionerate
   Newry Towers, No.2054-1, 2nd Avenue
   Anna Nagar, Chennai-40.

2. The Additional Director
   Directorate General of Central Excise
   Intelligence, Chennai Zonal Unit
   C3, C Wing, Rajaji Bhavan,
   Besant Nagar, Chennai 600 090.

3. The Deputy Commissioner of Service
   Tax, Division III, Service Tax II,
   Commissionerate, Newry Towers,
   No.2054-1, 2nd Avenue
   Anna Nagar, Chennai-40.

1 CC to Mr.S.R.Sundar, SCGSC, Advocate, SR. 51897

WP.No.32012/2016

SK (CO)
PSI 05/10/2016