IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32875/2016 & WMP.Nos.28413 & 28414/2016

M/s.Ranger I Security Force
rep.by its Partner S.K.Srinivasan
No.49, Vinayagapuram 2nd Street
MMDA Colony, Arumbakkam,
Chennai 600106. .. Petitioner

..Vs..

The Additional Commissioner of Service Tax-II
Commissionerate, Newry Towers, 2054-I Block
2nd Avenue, 12th Main Road, Anna Nagar West
Chennai 600 040. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus calling for the records from the respondent wherein the impugned order in Original No.158/2015-16-ST-II dated 29.03.2016 was passed by the respondent and quash the same as null and void.

For Petitioner : Mr.G.Natarajan
For Respondent : Mr.S.R.Sundar, SPC

ORDER

Heard Mr.G.Natarajan, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Panel Counsel accepting notice on behalf of the respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 The petitioner is an Ex-Serviceman and after his retirement from the Armed Forces, he started a Security Agency. Apart from that, the petitioner is also the President of the BSF Ex-Servicemen Welfare Association. At the time when the petitioner Organisation was started, since the petitioner did not have a proper address of his own, he had given the address of his father-in-law, as the registered place of business and he was carrying on business by providing security personnel to various Establishments.

3 According to the petitioner, the salary of the security personnel, is fully reimbursed by the clients and the

service element involved is marginal as the petitioner charges those clients, a nominal amount over and above the actual salaries payable to the security personnel. Therefore, the case of the petitioner is that even assuming that there is service tax liability, it cannot be on the salaries which are paid to the security personnel which are fully reimbursable from the clients. This is the contention raised by the petitioner and reiterated by the learned counsel for the petitioner. But the fact remains that the petitioner did not respond to the show cause notice issue by the Department and the notice sent to the address given by the petitioner at the time of registration with the Commissionerate, had returned with an endorsement "left". The adjudicating authority did not proceed in a hasty manner, but had granted two more opportunities of personal hearing on 08.03.2016 and 14.03.2016 respectively. However, the learned counsel for the petitioner would point out that these notices were affixed in the Notice Board of the Commissioner of Service Tax, Service Tax-II, Commissionerate, Chennai-40, and not in the registered address of the petitioner.

4 Be that as it may, considering the quantum of demand which has been confirmed in the impugned order, which is an exparte order, this Court is of the view that the petitioner could be granted an opportunity to go before the respondent and place all materials including their Books of Accounts to establish their case. However, to be entitled to such an opportunity, the petitioner should be put on terms.

5 Accordingly, the petitioner is directed to pay a sum of Rs.5,00,000/- [Rupees five lakhs only] towards the disputed service tax liability within a period of two weeks from the date of receipt of a copy of this order and if the same is done, then the petitioner is entitled to treat the impugned proceedings as a show cause notice, submit their reply along with the documents within a period of two weeks thereafter and at the time of receiving the reply, the respondent shall fix the date for personal hearing and give a written intimation under due acknowledgment to the petitioner and without further notice, the petitioner should appear before the respondent on the said date and put forth his case. Thereafter, the respondent shall re-do the adjudication in accordance with law.

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

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

The Additional Commissioner of Service Tax-II
Commissionerate, Newry Towers, 2054-I Block
2nd Avenue, 12th Main Road, Anna Nagar West
Chennai 600 040.

+1 cc to Mr.S.R.Sundar,advocate,sr.53056

+1 cc to Mr.S.Jaikumar,advocate,sr.53388.

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krd 23/9

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