IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8543 of 2016
&
WMP No.7599 of 2016

M.S.Zackaria
Bangalore - 560 008 ... Petitioner

Vs

1. The Additional Commissioner of Customs
Central Excise and Service Tax
6/7 ATD Street, Race Course,
Coimbatore-641 018.

2. The Superintendent of Central Excise
Range-1A Singapore Plaza
Crosscut Road, Coimbatore-641 012. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified mandamus, to call for the records of the first respondent relating to the impugned order passed in C. No. V/RIS/ 15/ 24/2012- ST (Adjn) Order Sl. No. 20/2014-ADC dated 10.03.2014 on the file of 1st respondent, quash the same and consequently direct the 1st respondent to conduct fresh enquiry and afford opportunity to the petitioner in accordance with law.

For Petitioner : Mr.R.Barathkumar

For Respondents : Mr.A.P.Srinivas
Senior Panel Counsel

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O R D E R

Heard Mr.R.Barathkumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel appearing for the respondents. 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 filed this Writ Petition challenging the Order- In Original dated 10.03,2014, under the Finance

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Act, 1994, pertaining to non payment of Service Tax under the heading "Renting of Immovable Property".

3.At the time when the Writ Petition was entertained, the learned counsel appearing for the petitioner on instructions submitted that the petitioner is ready and willing to clear the entire Service tax and in fact, produced a demand draft before the Court, towards the Service Tax liability. Therefore, this Court passed the following interim order on 24.06.2016:

> " Heard Mr.R.Bharath Kumar, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents.
>
> 2.The learned counsel for the petitioner submits that the petitioner due to unavoidable circumstances could not clear the service tax liability on account of certain defaults committed by his tenant.
>
> 3.The learned counsel for the petitioner submits that the petitioner is ready to clear the entire service tax and produced a demand draft for a sum of Rs.6,30,854/- in Cheque No.001107 560240065 before this Court towards service tax liability alone. It is seen that the said demand draft had expired and the petitioner is ready to re-validate the same. In my view, the said amount can be received by the respondent Department without prejudice to their rights and contentions that they may raise in this writ petition. Accordingly, the petitioner is directed to appear before the 2nd respondent and tender a demand draft towards the entire service tax liability as ordered in paragraph 21 (i) & (ii) within a period of two weeks from the date of receipt of a copy of this order. For the present a demand made in paragraph 21(iv), (v) and (vi) shall remain stayed.
>
> 4.List after four weeks."

Pursuant to the above order the petitioner has effected the payment and has filed a memo dated 22.07.2016 to the said effect, which is taken on record. As could be seen from the memo, the petitioner has paid a sum of Rs.6,30,854/- towards the Service Tax, as quantified in paragraph No.21(i) of the impugned order and Rs.6,60,292.90, towards interest claimed in paragraph No. 21(ii) of the impugned order.

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4.The learned Senior Panel Counsel appearing for the respondents who has got instructions from the Department, submitted that the petitioner has effected payment and has complied with the interim directions issued by this Court.

5.Admittedly, the petitioner did not avail the opportunity provided to him to appear before the authority. Therefore, the procedure adopted by the respondents in proceeding with the adjudication proceeding exparte, was perfectly valid and justified. However, considering the peculiar facts and circumstances of the case, wherein the petitioner had filed a Petition for Eviction before the District Munsif Court cum Rent Controller of Coimbatore in R.C.O.P.No.144 of 2012 and the lessee had entered appearance in the Petition filed by the petitioner under section 11(4) of the Rent Control Act, is also pending and the in the said Petition, an order has been passed to direct the lessee to pay the entire arrears of loan on or before 01.10.2013, which the lessee did not complied with, the petitioner had filed an Execution Petition in E.P.No.5 of 2014, to execute the said order and the said petition is also pending. Further, the petitioner has filed a Civil Suit in O.S.No.2928 of 2015, on the file of the City Civil Court, Bangalore, for recovery of arrears of rent amounting to Rs.89,85,529/- and the same is also pending.

6.Thus, considering the situation which the petitioner has been pushed to and taking note of the fact that the petitioner has complied with the interim direction issued by this Court dated 24.06.2016, this Court is of the view that the petitioner can be afforded one more opportunity and the matter can be adjudicated on merits.

7.In the light of the above, the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the respondents for fresh consideration. The respondents shall afford an opportunity of personal hearing to the petitioner, consider all the issues raised by the petitioner and proceed to adjudicate the show cause notice in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpa

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To

1. The Additional Commissioner of Customs
   Central Excise and Service Tax
   6/7 ATD Street, Race Course,
   Coimbatore-641 018.

2. The Superintendent of Central Excise
   Range-1A Singapore Plaza
   Crosscut Road, Coimbatore-641 012.

+1cc to Mr.A.P.Srinivas, SC., S.R.No.42259
+1cc to Mr.R.Barathkumar, Advocate, S.R.No.41780

W.P.No.8543 of 2016

MSM(CO)
CA(08/08/2016)

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