IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26387 of 2004
and
W.P.M.P.No.32140 of 2004
and
WVMP.1738/2006

Rana Kalyana Mandapam
Rep. By Kumaravel
S/o.Late Rana Lakshman
No.91, Perundurai Road
Erode 638 011 .. Petitioner

Vs.

1. The Deputy Commissioner of Central Excise
   Erode Division, Erode

2. The Commissioner of Central Excise
   Erode .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the file of 1st respondent in Proc No.RC 60/97/MAK-Service Tax dated 03.09.2004 and quash the same as illegal, incompetent, irregular and without jurisdiction.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.E.Vijay Anand
Senior Panel Counsel

O R D E R

The petitioner which is a Kalyana Mandapam has challenged the proceedings dated 03.09.2004 which is a notice of attachment of property for the purpose of recovery of Service Tax.

2. The only ground on which the impugned notice has been challenged is that the schedule of property has not been given. A perusal of the impugned notice of attachment shows that the schedule of property has not been given, which is an inherent defect, which cannot be cured. But, this Cannot have

any impact on the pending liability of the petitioner since the order in original has been passed on 29.04.2003 determining the liability and the copy has been received by the petitioner on 19.05.2003. Though the petitioner was advised to produce the stay order from the Appellate Authority, it appears that they have not done so. Further in the counter affidavit it has been stated that the petitioner has paid Rs.5000/- by Challan No.22 dated 22.07.2004 and Rs.10,000/- by Challan No.7/04-05 dated 13.09.2004. Therefore, the Department's stand is that they accepted the total dues. Copies of the relevant documents including payment vouchers have been filed by the respondents. Unless and until the order in original dated 29.04.2003 is stayed, reversed or modified, the petitioner is liable to pay the service tax. However, on technical ground, the impugned notice is set aside as it does not give the description of the property. However, liberty is given to the respondent to proceed for recovery of the service tax, if the same has not been already paid.

The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Deputy Commissioner of Central Excise
   Erode Division, Erode

2. The Commissioner of Central Excise
   Erode

1 cc to Mr.E.Vijay Anand, Advocate, sr.31135

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skj co
kra 29.06.2016