THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

Writ Petition No.12318 OF 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Vidyadhar Reddy, learned counsel for the petitioner, and Sri V.Gopala Krishna Gokhaley, learned Special Standing Counsel for Central Excise and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the order in original dated 22.12.2015 passed by the Additional Commissioner of Service Tax, Guntur (4th respondent herein) whereby a sum of Rs.24,07,146/- towards service tax, Rs.46,741/- towards education cess and Rs.23,369/- towards SHED cess, under the category of "Business Auxiliary" service/taxable service in terms of the proviso to Section 73(1) of the Finance Act, 1994 (for short "the Act") was imposed on the petitioner. In addition, the petitioner was called upon to pay interest at the appropriate rate under Section 75 of the Act with penalty of Rs.10,000/- under Section 77(2) of the Act and Rs.24,07,146/- under Section 78 of the Act.

The main contention, urged by the learned counsel for the petitioner, is that, though the adjudicating authority had stated in the show cause notice that the petitioner had acted as a business correspondent to Andhra Bank in terms of their agreement with M/s.Atyati Technologies Pvt. Ltd, he had failed to take into consideration the exemption notification No.25/2012-ST dated 20.06.2012 whereby, in terms of Clause 29(g) thereof, the services rendered by business facilitators or business correspondent to a banking company or insurance company in rural areas is exempt from payment of service tax.

Sri V.Gopala Krishna Gokhaley, learned Senior Standing Counsel, would fairly state that, as the adjudicating authority had failed to take note of the exemption notification, it would suffice if, instead of keeping the writ petition pending on the file of this Court, the impugned order is set aside and the 4th respondent is permitted to pass an order afresh after considering the exemption notification dated 20.06.2012.

As it does appear that, in terms of the exemption notification, services rendered by a business correspondent to a banking company in a rural area is exempt from tax, we consider it appropriate to set aside the impugned order leaving it open to the 4th respondent to pass an order afresh taking into consideration the exemption notification dated 20.06.2012. Needless to state that the 4th respondent shall pass an order afresh only after the petitioner is afforded an opportunity of a personal hearing.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date:26.04.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

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