THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

<u>Writ Petition No.41327 of 2015</u>

<u>ORDER</u>: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed questioning the letter dated 03.12.2015 issued by the 2nd respondent demanding Rs.1,98,183/- towards interest on the entire service tax dues, for the entire period, as illegal and arbitrary.

The petitioner renders services towards Mandap Keeper Services. It is their case that, while they had registered themselves in the year 2001 and were regular in payment of service tax and in filing returns till September 2007, the threshold limit for exemption from service tax was raised from Rs.5,00,000/- to Rs.8,00,000/-; they had paid Rs.22,135/- towards service tax on Mandap Keeper Services for the period November 2007 to March 2008, but did not file any returns during the said period; and since their turnover was less than the threshold limit of Rs.8,00,000/-, they discontinued payment of service tax and in filing of the returns.

The Government of India formulated a scheme knows as "Service Tax Voluntary Compliance Encouragement Scheme (VCES)" in Chapter VI of the Finance Act, 2013. That scheme was applicable for the period October 2008 to December 2012. The petitioner submitted an application, in terms of the scheme, and declared their service tax dues as Rs.3,77,150/- for the said tax period. While they paid 50% thereof i.e Rs.1,88,575/- on 31.12.2013; they paid Rs.1,66,260/-on 28.06.2014, and informed the respondents that, along with the sum of Rs.22,135/- paid by them during the period November 2007 to March 2008, they had paid the entire service tax dues of Rs.3,77,150/-.

However, by the impugned letter dated 03.12.2015, the petitioner was informed that payments made by them before the notification i.e

10.05.2013 would not be considered for discharging the liabilities declared by them under VCES; and since the petitioner had not paid Rs.22,135/- before 30.06.2014 without interest, or before 31.12.2014 with interest, as per Section 110 of the Finance Act, 2013 they were liable to pay interest on the entire service tax dues declared for the entire period of default. The petitioner was called upon to pay Rs.1,98,183/- towards interest, and furnish payment details immediately.

The entire dispute relates to payment of Rs.22,135/- by the petitioner before the scheme was introduced. Reliance is placed by Sri Jalakam Sathyaram on a Circular issued by the Central Board of Excise and Customs dated 08.08.2013 furnishing clarifications to the VCES. Paragraph 8 thereof deals with a situation where a person has made part payment of his tax dues before the scheme was notified, and has made a declaration under the VCES for the remaining part of the tax dues, and the clarification sought was whether he would be entitled to the benefit of non-payment of interest/penalty, on the tax dues paid by him outside the VCES (i.e amount paid prior to VCES). The Central Board of Excise and Customs clarified that the immunity from interest and penalty was only for the tax dues declared under VCES; and if any tax dues had been paid, prior to the enactment of the scheme, the liability of interest or penalty thereon should be adjudicated as per the provisions of Chapter V of the Finance Act 1994 and paid accordingly.

While the tax dues declared by the petitioner was for a sum of Rs.3,77,150/-, they paid 50% thereof i.e. Rs,1,88,575/- on 31.12.2013 and an additional sum of Rs.1,66,260/- on 28.06.2014 prior to the cut off date prescribed under the scheme i.e 30.06.2014. The aforesaid payments were made after introduction of the scheme and prior to the cut off date. The petitioner had paid only Rs.22,135/- prior to the introduction of the scheme. The clarification issued by the Central Board of Excise and Customs would have enabled the respondents to levy interest and impose penalty only for the amount paid by the petitioner towards tax dues prior to enactment of the scheme. Their power to levy interest and impose penalty was, therefore, only on Rs.22,135/- paid by the petitioner during November 2007 to March 2008, and not for the remaining amount paid by them after the scheme was introduced.

While Sri G.Mohan Rao, learned counsel for the petitioner, would draw attention of this Court to Section 111(2) of the Finance Act, 2013 to submit that neither can interest be levied nor can penalty be imposed even on this amount as it is beyond one year, it is wholly unnecessary for us to examine this issue, as we are satisfied that the respondents had acted illegally in levying interest of Rs.1,98,183/- for the entire amount of Rs.3,77,150/- towards service tax dues.

The impugned letter dated 03.12.2015, to the extent the petitioner was called upon to pay Rs.1,99,183/-, is set aside. It is made clear that this order shall not preclude the respondents from initiating action to levy interest and impose penalty on the amount paid by the petitioner during November 2007 to March 2008 (i.e for Rs.22,135/-) in accordance with law.

As it is not in dispute that the petitioner paid Rs.3,54,785/-, the respondents are required to issue a certificate to the petitioner as having discharged their service tax liability to this extent. The respondents, after verifying receipt of payment of the aforesaid amount of Rs.3,54,785/-, shall issue a certificate to the petitioner in this regard.

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

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 08.02.2016

JSU

<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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