

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 15896 of 2015(O&M)

Date of decision: 09.12.2016

Rajneesh Budhiraja

.. Petitioner

vs.

Union of India and ors.

.. Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
 Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Jagmohan Bansal, Advocate
 for the petitioner.

 Mr. Sourabh Goel, Advocate
 for the respondents.

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Rajesh Bindal, J.

The petitioner herein, who is working as Real Estate Agent, is liable to pay service tax. During the period from 2007-10, the petitioner did not pay the tax as leviable under the Finance Act, 1994 as amended upto date. Vide the Finance Act, 2013(for short the 2013 Act), a scheme known as the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (for short 'the Scheme') was introduced under Sections 104 to 111 of the 2013 Act. Any person who is covered under the provisions of Section 106-107 of the 2013 Act could make a declaration upto 31.12.2013. The amount of tax voluntary declared by him was to be paid in two installments, namely 50% by 31.12.2013 and the balance 50% upto 30th June, 2014. As per declaration made by the petitioner, he paid an amount of ₹ 4,74,145/- on due dates. Later the petitioner realized that there was some calculation error for short period where he calculated the tax @ 10.3% as against 12.36%. There was short fall of ₹ 60,206/- in the amount of tax. The additional amount alongwith interest of ₹ 15,741/- was paid by the petitioner on May 30, 2015. Thereafter vide order dated 09.06.2015 the Assistant Commissioner- Designated Authority under the Scheme rejected the

application filed by the petitioner. It is this order, which is impugned in the present writ petition.

Short contention raised by learned counsel for the petitioner was that as per Section 111 of the Scheme, the Commissioner of Central Excise could reject the declaration in case it is found to be substantially false, but only after issuing show cause notice to the applicant and recording reasons. The action could be taken only within one year from the date of filing of declaration. In the present case, though the declaration was filed on 31.12.2013, the impugned order passed on 09.06.2015 i.e. beyond the period of one year. Further no opportunity of hearing was granted before passing the order.

Learned counsel for the respondents submitted that it was the admitted case of the petitioner himself that the declaration made by him was not correct and further as per his own calculation he did not deposit 50% of the tax upto 31.12.2013 and balance 50% of the tax upto June, 2014. In fact part of the tax was deposited on May 30, 2015, hence his declaration has rightly been rejected. However, he did not dispute the fact that before rejection of the declaration filed by the petitioner, no opportunity of hearing was granted.

He further submitted that in view of the judgment of this Court in **Barnala Builders & Property Consultants vs. Dy. C.C.E. & S.T., Dera Bassi 2014(35) STR 65 (P&H)** the impugned order is appealable before the Commissioner (Appeals), hence the petitioner could avail of his appellate remedy.

In response to that, learned counsel for the petitioner submitted that order having been passed in violation of principles of natural justice,

the writ petition deserves to be entertained.

After hearing learned counsel for the parties, however without opining on the merits of the controversy as regards acceptance or rejection of the declaration made by the petitioner, the impugned order dated 09.06.2015(Annexure P-7) deserves to be set aside only on the ground of violation of principles of natural justice. It is clearly envisaged under section 111 of the Scheme that where a declaration made under the Scheme was substantially false, the competent authority, for the reasons to be recorded in writing, after issuing a show cause notice to an applicant, take appropriate action. The order having been passed in violation of the provisions of the Scheme, deserves to be set aside on that score alone.

As regard the preliminary objection raised by learned counsel for the respondents, suffice to state that as admittedly, there is violation of principles of natural justice as envisaged under Section 111 of the Scheme, the writ petition can be entertained. Reference can be made to **M/s Popcorn Entertainment & Anr. vs. City Industrial Development (2007) 9 SCC 593**

For the reasons recorded above, the impugned order dated 09.06.2015 (Annexure P-7) is set aside. The matter is remitted back to the competent authority, to be decided afresh, after issuing show cause notice, as per law.

The petition stands disposed of.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

09.12.2016
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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No