NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 330 of 2017

Parthivi Construction Private Limited, Parthivi's Pacific, G.E. Road, Tatibandh, Raipur Chhattisgarh

---- Petitioner

Versus

Union of India, Through: the Commissioner, Customs & Central Excise, Central Excise Building, Dhamtari, Road, Raipur Chhattisgarh 492001

–--Respondent

For Petitioner	:	Mr. Vinay Kumar Jain, Advocate
For Respondent	:	Mr. Manish Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/11/2017

1. The present writ petition has been filed assailing the notice to show cause dated 23.10.2015, issued by the respondent under the provisions of Central Excise Act. The contention of the petitioner while assailing notice to show cause is on the ground that:-

   (a) That the respondent is proceedings with the show cause notice without providing the documents which are being relied upon by the department while raising the demand of service tax liability.

   (b) That the impugned show cause notice has been issued with a prejudice and predetermine mind set of the respondent.

   (c) That the impugned show cause notice has bee issued beyond the stipulated period under Section 73(i) of the Finance Act and as such the entire proceedings is barred by limitation.

2. Counsel for the petitioner referring to paragraph 22 of the impugned notice to show cause submits that the department has referred to a series of documents as is reflected from the table for initiating the proceedings and unless the petitioner is served with these

documents. It would be difficult for the petitioner to reply and take effective defence before the authority while replying to show cause to defend themselves in the proceedings so initiated. Likewise, the petitioner further referring to paragraph No. 29 of the show cause notice submits that the authorities have already reached to the conclusion by assessing the tax liability as also the liability for the interest and penalty part and thus the authorities are clearly prejudiced and predetermined and any further proceedings drawn would only be an empty formality.

3. Lastly, it was contended that since the assessment year issued was in respect of the period 2012-13 to 2014-15 and the show cause notice have been initiated on 23.10.2015. The same is clearly beyond 18 months period of limitation prescribed under Section 73 of the Finance Act.

4. Counsel for the petitioner also relied upon the series of decisions of the Hon'ble Supreme Court as also of different High Courts to buttress his contentions.

5. Per contra, the counsel for the department opposing the petition submits that firstly the petition is premature at this stage as it is only the show cause notice which has been issued to the petitioner. He submits that the petitioner has the right to take all the stands that he has taken before this Court before the concerned authority by filing a suitable reply taking all these as his defense.

6. Secondly, the petition deserves to be rejected on the ground of delay and laches as the impugned notice to show cause was issued as early as on 23.10.2015 and the present petition has been filed only on 06.11.2017 i.e. after more than two years. The counsel for the

department further referring to their correspondence made to the petitioner vide their letter dated 14.08.2017 (Annexure P/12) submits that they had clearly reflected that the documents relied upon by the department was those which were based upon the chart submitted by the petitioner noticee themselves and he further submits that even otherwise the petitioner can still raise these demands while replying to the show cause notice and the authorities concerned would definitely take into consideration the contents of the reply while further proceeding with the notice to show cause and thus prayed for the dismissal of the petition.

7. Having heard the contentions put forth on either side and also on due consideration of the judgment which have been relied upon by the petitioner side as far as the scope of interference by the writ Court in a proceeding where the show cause notice is under challenge is now well established and settled that given a particular facts and circumstances of the case the High Court in exercise of its writ jurisdiction can entertain the petition.

8. However, it does not by itself means or lays down the legal principles that every writ petition challenging the show cause notice should be entertained by the High Court. It is a fact of each case which would be relevant in determining whether the extraordinary writ jurisdiction should be invoked or not.

9. The perusal of the facts of the present case is that the petitioner company is engaged in the construction activities and is also in the business of renting of immovable properties. The show cause notice would reveal that the proceedings against the petitioner were initiated as early as in the year 2012 itself when the noticee was

issued with summons to submit monthly details of the amounts collected from the customers for constructions, parking place charges along with the rent in respect of renting of immovable property along with monthly details, the respondent had also sought for the relevant accounts and documents and the service tax involved.

10. In the process, one of the Directors of the noticee company i.e. Mr. Shailesh Verma also appeared before the department and furnished certain information and documents based upon which the show cause notice was issued.

11. Further, if we look at the demand of documents by the petitioner vide its letter dated 04.01.2016 (Annexure P/4) and the documents dated 27.01.2016 (Annexure P/5) would show that the documents seems to be those on the basis of which the calculation of service tax liability in respect of the residential unit having carpet area in excess of 2000 sqft and also the entire construction so also the table showing the service wise breakup of the service tax liability.

12. This Court is of the opinion that once when the department has issued notice seeking explanation from the petitioner to explain as to why the assessment so arrived at by the department should not be finalized, it is the duty and responsibility of the petitioner to have entered appearance before the authorities and to have contested the assessment so arrived at by the department by providing them the necessary documents with which the authorities could have arrived at a proper assessment. That if the petitioner is able to adduce/provide sufficient documents and evidence in respect of the respective constructions which the petitioner had carried out or

details of the rent received the department could have come to an actual assessment.

13. If we look into the show cause notice it reflects that the authority concerned has elaborately dealt with and have given minute details and information which led to the issuance of the show cause notice. This Court does not find any strong case made out by the petitioner calling for an interference at this juncture. The petitioner can still submit the detailed reply and can take all necessary pleas in his reply including that of the non-availability of the documents and the relevancy of those if any.

14. As regards the matter being barred by limitation also is a fact which would be and looked into by the authority concerned. As, it is a matter of fact to be decided, as to what was the date on which the initiation of proceedings against the petitioner made.

15. That, as regards the third ground of the respondent being prejudice and predetermined, this Court is not inclined to accept these arguments as the authorities concerned would be bound to consider the reply which the petitioner would raise in the reply and thereafter would on due appreciation of the contents of the reply, documents and evidence adduced by the petitioner would determine the liability part. In view of the aforesaid observations and findings, this Court is not inclined to entertain the petition at this stage and the same is therefore disposed of.

16. However, while disposing this petition it is trite to mention that in the event if the petitioner things of filing a detailed reply to the show cause notice and takes all the grounds which they have taken in the present petition it shall be the duty of the concerned authority to deal

with it also objectively while deciding the matter including the issue of the matter being barred by limitation and other legal grounds, if any.

17. The petition thus stands dismissed with the aforesaid observations.

Sd/-
(P. Sam Koshy)
Judge

Ved