IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5449/2016
(W.B. Jaipuria:Through its Prop: vs. Ordnance Factory, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Mr H.R.Gadhia, Adv.for petitioner
Mrs Mugdha R. Chandurkar, Adv.for respondent

CORAM : **B.P. DHARMADHIKARI & MRS.SWAPNA JOSHI,JJ.**
DATED : **14th February, 2017.**

1. Heard.

2. The only dispute is, whether petitioner-firm is entitled to refund of service tax paid by it on actual wages called as gross wages or then on a lesser amount i.e. on amount of minimum wages?

3. After hearing respective counsel, we find that in all contracts, vide clause 6(f), service tax is refundable at actual to the contractor after production of attested copy of challan. This is followed by stipulation, "***presently it is calculated on wages only***".

4. The petitioner has paid minimum wages as also contributed towards provident fund, ESI etc. Service tax has thus been calculated on all these components by treating the total as gross wages. The petitioner claims refund of that amount, in view of the above-mentioned stipulation in contract.

5. In paragraph 3 of Writ Petition, petitioner has pointed out that total amount refundable to him may be in excess of Rs. 7 lakhs.

6. Respondent has filed its reply and pointed out that the petitioner is claiming relief in relation to seven labour contracts mentioned in paragraph 8 thereof. In paragraph 9 it is stated that though contracts envisage reimbursement of service tax paid at actual, there is some ambiguity and hence the Department preferred to discharge the liability on minimum wage only.

7. The respondent has filed one reply vide Stamp No. 189/2017 on 6.1.2017. Another reply has been filed vide Stamp No. 967/2017 on 24.1.2017. The later reply also does not deviate materially insofar as controversy before this Court is concerned. The earlier reply does not have necessary annexures and those annexures are supplied on record with the later reply. The respondent has therefore stated that the earlier reply is not being pressed by it.

8. Though the fact that petitioner has paid service tax on actual wages i.e. on gross wages, is not in dispute because of alleged ambiguity, the respondent has though it safe to reimburse proportionate service tax charged on minimum wage only.

9. The service charge is not a component controlled by parties before this Court. The correctness of course of action of petitioner is not in dispute. In this situation, the above-mentioned term 6(f) clearly shows that service tax was agreed to be

reimbursed in future at actual to the contractor. The condition was he was to produce the attested copy of challan. Thus, the figures of service tax reflected in challan was to be reimbursed after challan is produced. In this backdrop, when later stipulation reproduced *supra* i.e. “presently, it is calculated on wages only” is read, it does not derogate from the obligation accepted by respondent -employer in main condition. It only clarifies that for the purposes of calculation and provisionally while entering into contract, service tax component on minimum wage only was to be taken into consideration. This was a provisional arrangement.

10. As we find petitioner entitled to refund of service tax on gross wages, number of contracts in relation to which petitioner is claiming refund is not very relevant here. If the petitioner produces relevant challans as per law, the respondent is duty bound to refund the amount mentioned in that challan, to petitioner also, as per law, if claim is within time.

11. Hence, we grant petitioner leave to submit necessary challans claiming reimbursement within four weeks from today. If such challans are received, respondent can verify it as per law and consider entitlement of petitioner to refund thereof, within next eight weeks.

12. The amount to which petitioner is found entitled, shall be then reimbursed to him. Acceptance of that amount shall not preclude petitioner from challenging correctness of the exercise undertaken.

13. Needless to mention that all other objections which respondent may have in relation to such claim and reimbursement, are open and can be looked into while undertaking scrutiny of such challans produced by petitioner.

14. The Writ Petition is partly allowed and disposed of. No costs.

JUDGE **JUDGE**

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