IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6577 of 2017,
WMP.Nos.7068 and 7069 of 2017

R.S.Senthilkumar ... Petitioner

Vs.

1.The Additional Commissioner of Service Tax,
Service Tax - III Commissionerate,
NEWRY TOWERS, No.2054-I,
II Avenue, Anna Nagar, Chennai - 600 040.

2.The Assistant Commissioner of Service TAx,
Division - V, Service Tax - III,
NEWRY TOWERS, No.2054-I,
II Avenue, Anna Nagar, Chennai - 600 040.

3.The Superintendent,
Office of the Deputy Commissioner of Central Excise,
Survey, Intelligence and Research Unit,
Tambaram - I Division,
Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai - 600 073. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the first respondent herein culminating in the issue of Order-in-Original No.45/2016 dated 18.02.2016 from File C.No.IV/09/136/2015-STC-III Adj.(ADC-V) and quash the same.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.S.R.Sundar
Senior Standing Counsel

O R D E R

Heard Mr.S.Murugappan, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Standing Counsel for the respondents.

2. With the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

3. The petitioner has challenged the Order-in-Original dated 18.02.2016, by which, the first respondent has demanded payment of Rs.8,56,920/-, being the Service Tax payable on 'Renting of Immovable Property Service', for the period from April 2009 to September 2011; for payment of interest under Section 75 of the Finance Act; penalty of an equivalent amount as Service Tax; and Penalty of Rs.10,000/-.

4. Under normal circumstances, this Court would not entertain a writ petition against the impugned order, as there is an effective alternative remedy of appeal before the Commissioner (Appeals). However, the Court, which heard the matter on 17.03.2017 was prima facie satisfied that the writ petition could be entertained and recorded certain reasons and granted interim protection for the petitioner.

5. The respondents have filed counter affidavit and the matter was heard on merits t oday.

6. The short issue, which arises for consideration is as to whether the respondents could demand Service Tax, as mentioned in the impugned order.

7. The petitioner, owns two immovable properties, which were leased out to M/s.Cholamandalam MS General Insurance Company Limited and M/s.Bharat Medicare Private Limited and in respect of the rental income received, the petitioner was required to remit Service Tax. There is no dispute to the fact that the petitioner has remitted the Service Tax in respect of the property leased out to M/s.Cholamandalam. Even in Paragraph 6 of the Show Cause Notice, the first respondent has admitted that there is no liability towards the property leased out to M/s.Cholamandalam and that since September, 2011, the petitioner has been paying service tax regularly in respect of the said property and has filed Service Tax returns. The dispute is only with regard to the property leased out to M/s.Bharat Scans.

8. The petitioner was summoned to appear before the Department and a statement was recorded from him on 17.11.2011. In the statement, the petitioner has stated that he has paid Service Tax for the property leased to M/s.Cholamandalam, but, in respect of the property leased to M/s.Bharat Scans, he has paid service tax up to the period which the lessee had paid him the service tax along with monthly rent and the balance amount was not paid by the petitioner because M/s.Bharat Scans stopped paying service tax by referring to a decision of the Delhi High

Court. The petitioner further stated that since the Department has advised him to pay service tax with interest, he assured that all dues would be paid shortly and will report compliance.

9. Accordingly, the petitioner informed the third respondent vide letter dated 25.10.2012 that he has paid the service tax dues till date and a statement was enclosed showing that total service tax paid by him for the period from September 2008 to March 2009 was Rs.12,54,995/-. In spite of having submitted such letter, Show Cause Notice was issued to the petitioner dated 14.11.2013 demanding Service tax, interest and penalty in respect of the property leased to M/s.Bharat Scans. The petitioner submitted a detailed reply stating that entire service tax liability with interest has been paid by him on 23.11.2012 and produced challans. Though such a statement was made by the petitioner and re-iterated the same through personal hearing, the first respondent has stated that the petitioner has not paid service tax and confirmed the proposal under the Show Cause Notice.

10. I find that there is no discussion as to the payment effected by the petitioner and no finding has been rendered by the first respondent on the said aspect. Thus, it is clear that the impugned order has been passed without appropriate application of mind. Even after the impugned order was served on the petitioner, the petitioner submitted a representation on 20.10.2016 reiterating his earlier stand and requested for rectification of the mistake by enclosing the copies of the challans, work sheet etc., Inspite of such representation, once again, the first respondent has stated that there is no error in the Order-in-Original calling for rectification.

11. However, for the first time in the counter affidavit, the respondents have taken a stand that they are unable to reconcile with regard to the payments effected by the petitioner and the demand raised by them. However, the counter affidavit has not been filed by the first respondent, but by the second respondent. It is unfortunate that Service Tax Commissionerate is unable to reconcile its own accounts and without any reservation, has filed a counter stating that the amounts paid by the petitioner do not match with the demand raised by the Department in the Show Cause Notice. As mentioned earlier, the first respondent, at an earlier point of time had not acknowledged the payments made by the petitioner and for the first time in the counter affidavit filed by the second respondent, the payments have been referred to. It is not known as to why the first respondent has not referred to the payments

made by the petitioner in the impugned order and this appears to be for reasons best known to him. If the Department wanted the petitioner to produce their bank statements to reconcile the payments, nothing prevented the first respondent from calling upon the petitioner to do so. On the contrary, in a most arbitrary and cryptic manner, the impugned order has been passed. That apart, the payment effected by the petitioner is more than the amount demanded in the impugned order. Thus, if respondents 1 and 2 are unable to reconcile the accounts in their office, it shows the manner in which the office administration is taking place. This Court is fully convinced that the petitioner has been harassed by the Department by passing the impugned order.

12. For the reasons stated above, the impugned order is liable to be quashed and accordingly, it is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1.The Additional Commissioner of Service Tax,
Service Tax - III Commissionerate,
NEWRY TOWERS, No.2054-I,
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Plot No.40, Ranga Colony,
Rajakilpakkam, Chennai - 600 073. 0

+1cc to M/S.S.Murugappan, Advocate Sr. 49306
+1cc to M/S.S.R.Sundar, Advocate Sr. 49470

W.P.No.6577 of 2017

SAI(CO)
VR(02/08/2017)