IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.3167 of 2017
And
W.M.P.No.3105 of 2017

M/s.Navin Housing Properties Pvt. Ltd. ... Petitioner

Vs.

1 The Commissioner of Service Tax (Appeals-II)
Newry Towers,
2054, I Block
2nd Avenue, 12th Main Road
Anna Nagar West,
Chennai 600 040.

2 Additional Commissioner of Service Tax
ST II Commissionerate
Newry Towers, No.2054-I,
2nd Avenue, Anna Nagar,
Chennai 600 040. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the respondent, wherein the communication bearing C.No.IV/2/10/2016 (STA-II) dated 21.12.2016 was issued by the 1st Respondent and to quash the same and direct the respondent to entertain the appeal filed by the petitioner, without insistence of any further pre deposit.

For Petitioner : Mr.G.Natarajan
For Respondents : Mr.A.P.Srinivas
Standing Counsel

O R D E R

1.Issue Notice. Mr.A.P.Srinivas, learned Standing Counsel, accepts notice on behalf of the respondents. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The instant writ petition has been directed against the order dated 21.12.2016, passed by the Superintendent of Central Excise (Service Tax – Appeals II). By virtue of this order, the petitioner's appeal against the order – in – original dated 14.10.2016, has been returned upon purported failure to comply with the requirements of pre-deposit of service tax and penalty. In this behalf, in the impugned order, reference is made to Section 35F of the Central Excise Act and 83 of the Finance Act, 1994.

3.Learned counsel for the petitioner says that prior to the show cause notice dated 09.02.2012, which was the subject matter of the order–in–original dated 14.10.2016, an earlier show cause notice dated 12.10.2011, was issued.

3.1.It is stated that the said show cause notice was adjudicated upon, whereby, a demand was raised, against which, a sum of Rs.99,94,773/-, which had been paid by the petitioner, was appropriated.

4.To be noted, the said show cause notice pertains to the period December, 2008 to January, 2010. The show cause notice, which was adjudicated vide order–in–original dated 14.10.2016, pertained to the period spanning between April, 2008 and March, 2010. Via the order–in–original dated 14.10.2016, the demand amounting to Rs.29,16,716/- qua service tax was confirmed against the petitioner.

4.1.Furthermore, penalty in the sum of Rs.10,000/- was also levied under Section 77 of the Finance Act, 1994. In addition thereto, penalty under Section 78 of the very same Act in the sum of Rs.29,16,716/- was also levied. In the said order, it is also indicated that a proposal to a rebate, vis-a-vis penalty imposed, would be provided, if it was paid, within the time stipulated in the order.

5.Learned counsel for the petitioner has placed before me, the month wise income and short payments for 2008-09. For the sake of convenience, the said calculation, which is, purportedly, given by the respondents is set out herein below:

Month	***Income Received After Adjusting Land Cost (Rs.)***	***Income Offered For Service Tax (Rs.)***	***Amount Not Shown in ST-3 Return (Rs.)***
APRIL 08	1,48,00,100/-	1,48,00,100/-	---
MAY 08	5,03,54,000/-	5,03,54,000/-	---
JUNE 08	1,20,70,000/-	1,20,70,000/-	---
JULY 08	3,19,07,325/-	3,19,07,325/-	----
AUGUST 08	2,11,50,000/-	2,11,50,000/-	---
SEPT 08	45,20,000/-	45,20,000/-	---
OCT 08	44,01,500/-	44,01,500/-	---
NOV 08	31,20,000/-	31,20,000/-	---
DEC 08	82,12,500/-	Nil	82,12,500/-
JAN 09	42,47,500/-	1,95,000/-	40,52,500/-
FEB 10	1,52,47,500/-	Nil	1,52,47,500/-
MAR 10	1,90,50,000/-	Nil	1,90,50,000/-
TOTAL	18,90,80,425/-	14,25,17,925/-	4,65,62,500/-
TAX LIABILITY ON THIS AMOUNT RS. 19,18,375/-			

5.1.Based on the aforesaid tabular column, it is stated that the difference in income pertains only to the period spanning between January, 2009 and March, 2010. Thus, according to the learned counsel for the petitioner, there is no difference in income between April, 2008 and November, 2008.

6.It is the contention of the learned counsel for the petitioner that the payment pursuant to the show cause notice dated

12.10.2011, would cover the demand raised qua the subsequent show cause notice dated 09.02.2012, as well.

6.1.It is, thus, the submission of the learned counsel for the petitioner that the requirement of pre-deposit of 7.5% of the service tax stands fully covered.

7.Learned counsel for the petitioner says that these aspects were sought to be brought to the attention of the concerned authority, broadly, in the petitioner's representation dated 16.12.2016.

7.1.The grievance of the petitioner, is that, the impugned order does not advert to any of the submissions made in the representation dated 16.12.2016.

8.Mr.A.P.Srinivas, who appears for the respondents on the other hand, says that there is no duplication, and that, the petitioner would have to deposit, as required in law, 7.5% of the service tax/ penalty as indicated in the impugned order.

9.Having heard the learned counsels appearing for the parties and perused the record, according to me, there appears to be, prima facie, some merit in the assertions made before me by the counsel for the petitioner.

9.1.Unfortunately, the concerned authority while passing the impugned order has not adverted to any of the assertions made by the petitioner. The order returning the appeal is silent on the aspects adverted to in the representation dated 16.12.2016.

10.In these circumstances, the impugned order is set aside. The concerned authority will advert to the assertions made in the representation dated 16.12.2016, and since, it is a matter, which, largely, would turn on amounts paid and the period, for which, moneys were paid, as is adverted to hereinabove, before passing a fresh order, the concerned authority will hear the authorised representative of the petitioner. Let the needful be done, within two weeks from the date of receipt of a copy of this order.

11.The writ petition is disposed of, in the aforementioned terms. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

09.02.2017

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Index: Yes/ No
Internet: Yes/ No

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