IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32068 of 2017 and
W.M.P.No.35211 of 2017

B.Sreeram ... Petitioner

Vs.

1.The Union of India,
Rep. by Superintendent,
Head Quarters Preventive,
Office of the Principal Commissioner of GST &
Central Exercise, Head Quarters Preventive Unit,
No.6/7, A.T.D. Street, Race Course Road,
Coimbatore.

2.The Chief Engineer,
Southern Command,
Mukhyalaya Mukhya Abhiyanta,
Pune - 411 001.

3.The Lt. Col.,
Garison Engineer DSSC,
Wilington, The Nilgiris. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records pertaining to the impugned order C.No.IV/06/60/2016-HPU Gr.III PF-1, daed 19.09.2017 consequential reminder by proceeding C.No.IV/06/60/2016-HPU Gr.III PF-1, dated 10.10.2017 on the file of the first respondent and quash the same.



For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.A.P.Srinivas
Senior Panel Counsel (For R1)

O R D E R

Mr.B.Kumarasamy, the learned counsel appearing for the petitioner and Mr.A.P.Srinivas, the learned Senior Panel Counsel appearing for the first respondent. Notice to the respondents 2 and 3 is dispensed with as there is no prayer sought for against them.

2.The petitioner's case is couched in a very narrow campus. He being a Diploma holder in Civil Engineering has been doing contract work for the past 12 years in the Nilgiris District stated to be an exclusive contractor for the defence department. The petitioner's contract has been periodically renewed and as on date, it is valid upto 31.12.2010 vide proceedings dated 19.10.2015. The petitioner is aggrieved by a notice issued by the first respondent dated 19.09.2017 calling upon the petitioner to produce certain documents on the alleged ground that the petitioner was providing taxable services to various customers and liable to service tax as per the provision under Section 65 of the Finance Act, 1995, i.e. prior to Central Goods and Services Tax Act, 2017 (CGST Act). The petitioner would state that the work carried out by him is fully exempt from service tax as they are all defence contracts and the petitioner has listed out number of works done by him.

3.In any event, the first respondent has not assessed the petitioner to tax but on the alleged ground he is providing taxable services and liable to tax under Section 65 of the Finance Act, 1995, has issued the notice. If the petitioner is able to satisfy the first respondent that he is an exclusive defence contractor and all contracts performed by him are exempt from service tax, then the question of paying service tax does not arise. However, for that reason, the petitioner cannot state that the impugned proceedings have to be quashed. It is seen that the petitioner has given a representation to the first respondent on 24.11.2017 and the same is pending.

4.Considering the facts and circumstances of the case, while declining to grant the prayer sought for, there will be a direction to the petitioner to appear before the first respondent with all the records and the first respondent shall enquire into the matter and ascertain the nature of work done by the petitioner and proceed in accordance with law. The above direction shall be complied with within a period of four weeks from the date of receipt of a copy of this order. Till then, no coercive action shall be initiated against the petitioner.

5.With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

cse Sub Assistant Registrar

To

1.The  Superintendent,
   Head Quarters Preventive,
   Office of the Principal Commissioner of GST &
   Central Exercise, Head Quarters Preventive Unit,
   No.6/7, A.T.D. Street, Race Course Road,
   Coimbatore.

2.The Chief Engineer,
   Southern Command,
   Mukhyalaya Mukhya Abhiyanta,
   Pune - 411 001.

+1cc to Mr.B.Kumarasamy, Advocate, S.R.No.87986

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.88063

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SSI(CO)

RRK(02/01/2018)