IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2017

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THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.1468 and 1469 of 2017
and
WMP No.1380 of 2017 in W.P.No.1468 of 2017

M/s.Service Care Pvt. Ltd.,
rep. by its National Head Payroll Services,
No.125, 10th Cross,
Indira Nagar Ist Stage,
Bangalore-560 038. ... Petitioner in both W.Ps

Vs.

1. The Deputy Commissioner (SIR-II),
Service Tax Commissionerate-II,
No.2054, Newry Towers,
Second Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

2. The Commissioner of Service Tax,
No.2054, Newry Towers,
Second Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

3. The Superintendent (SIR-II, GR.III),
Service Tax II Commissionerate,
No.2054, Newry Towers,
Second Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

4. Union of India,
Rep. by its Secretary,
Ministry of Finance, Department of Revenue,
Government of India, North Block,
New Delhi. ... Respondents in both W.Ps

Prayer in W.P.No.1468 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Prohibition or any other appropriate writ, order or direction prohibiting respondents from proceeding with issuance of recovery notices under Section 87 of the Finance Act, 1994, to the petitioner's clients and to pass such further or other orders as deemed fit in the facts and circumstances of the case.

Prayer in W.P.No.1469 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents 1 to 3 to refund the amounts collected coercively from the clients of the petitioner being amounts belonging to the petitioner or to issue any other appropriate writ or order as this Hon'ble High Court may deem fit and proper to the facts and circumstances of the case.

For Petitioner : Mr. V.S.Manoj

For Respondents : Ms.Hema Muralikrishnan
Standing Counsel

COMMON ORDER

1. Pursuant to the last hearing, Ms.Hema Muralikrishnan has returned with instructions.

1.1. She affirms that no assessment order has been passed against the assessee, which is a proprietorship concern bearing the name "Service Care".

2. To be noted, on the previous date, I had passed the following order. Therefore, in order to avoid prolixity, the order dated 20.01.2017 is extracted hereafter :

> "1.Issue notice. Ms.Hema Muralikrishnan, learned Standing Counsel accepts notice on behalf of the respondents. Learned counsel says that she will obtain instructions in the matter.
>
> 2.In brief, the case of the petitioner is that, service tax liability, which is sought to be recovered by the respondents is that of a proprietorship concern which was owned by the deceased father of the Managing Director of the petitioner Company.
>
> 3.To be noted, the proprietorship concern goes by the name 'Service Care'. The petitioner Company, as is evident from the cause title bears the name: 'Service Care Private Limited'.
>
> 4.It is the case of the learned counsel for the petitioner that the petitioner Company is registered with the Bangalore Commissionerate and therefore, the respondents would have no jurisdiction in the matter.
>
> 5.Furthermore, the learned counsel for the petitioner says that even though the proprietorship concern stood dissolved upon the death of the proprietor i.e., her father one, Mr.Jalaludin, no assessment order has been passed qua the said entity to the knowledge of the Managing Director of the petitioner Company.
>
> 6.Therefore, the submission of the learned counsel for the petitioner, is that, initiation of recovery proceedings without having passed an

assessment order are illegal and unsustainable in law.

7.It is however conceded by the learned counsel for the petitioner that the clients of the erstwhile proprietorship concern are now being serviced by the petitioner Company. It is, however, the case of the petitioner Company that service is being rendered under separate and fresh agreements with the clients of the erstwhile proprietorship concern.

8.In these circumstances, what is required to be enquired is, as to whether, firstly, any assessment order has been passed with respect to the erstwhile proprietorship concern. Secondly, as to whether clients of the erstwhile proprietorship concern including L & T Valves Limited against whom the garnishee order has been issued owed any money to the proprietorship concern.

9.Re-notify on 24.01.2017."

3. A perusal of the aforesaid extract would show that the grievance of the petitioner is that the garnishee order issued, qua its customer, i.e., L & T Valves Limited, has been passed without any basis in law. The situation is no different qua the garnishee order issued to the other customer of the petitioner, namely, M.N.Dastur and Company (P) Ltd.

4. The petitioner's grievance is that no tax is due on its account to the respondents and tax, if any due, was payable, if at all, by the erstwhile proprietorship concern.

4.1. It is submitted that since, the proprietor has died leaving behind no estate, no recovery could be made from the petitioner, only because L & T Valves Limited and M.N.Dastur and Company (P) Ltd., were earlier customers of the proprietorship concern.

5. Having perused the record and heard the counsel for the parties, according to me, the respondents could not have, willy-nilly, passed the garnishee orders without first passing an assessment order.

5.1. Admittedly, no assessment order has been passed.

6. In these circumstances, the garnishee orders appended at page No.15 and 17 of the typed set of documents are set aside. To that extent, the prayer made in W.P.No.1468 of 2017 is modified. In so far as the prayer made in W.P.No.1469 of 2017 is concerned, the same is not pressed before me. Liberty, though, is given to seek refund, if any, in accordance with law, by instituting appropriate proceedings in that behalf.

6.1. Needless to say, if, otherwise entitled in law, the respondent would be free to initiate proceedings against the estate of the proprietorship concern, having regard to the extant provisions of law.

7. The writ petitions are disposed of in the aforesaid terms. Resultantly, pending application is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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4. The Secretary,
Union of India,
Ministry of Finance, Department of Revenue,
Government of India, North Block,
New Delhi.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.5986
+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.6035

W.P.Nos.1468 and 1469 of 2017
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KJ(CO)
CA(02/02/2017)