IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.479 of 2016 and
CMP No.6622 of 2016

Lanco Tanjore Power Company Ltd.,
(Formerly known as Aban Power Company Ltd.,)
Rep by its Chief Financial Officer S.Kathir Kamanathan
No.25, GN Chetty Road,
T.Nagar, Chennai - 600 107. ...Appellant

Vs

1.Commissioner of Service Tax-II,
Newry Towers, Plot No.2054-1,
12th Main Road, II Avenue,
Anna Nagar, Chennai - 600 040.

2.Superintendent of Central Excise (Rage 87)
Service Tax Division XVIII
Service Tax Commissionerate Delhi IV
CR Building I P Estate,
New Delhi 110 022. ...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent, against the order made in W.P.No.39082 of 2015 dated 07.03.2016.

W.P.NO.39082/15 Prayer.

To issue a writ of Certiorari, calling for the Records on the file of the 1st respondent in proceedings C.No.IV/09/173/2015-STC-II(Adj) in show cause notice No.77/15, dated 15.10.2015 and to quash the same.

For Appellant : Mr.Joseph Prabakar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

J U D G M E N T

K.K. SASIDHARAN,J.

The appellant challenged the show cause notice issued by the Commissioner of Service Tax, Chennai before the writ court. The writ petition was dismissed on the ground of availability of alternative remedy. Feeling aggrieved by the order dated 7 March, 2016 in W.P.No.39082 of 2015, the unsuccessful writ petitioner is before this Court.

2. The learned counsel for the appellant contended that the Commissioner, Service Tax has absolutely no jurisdiction to issue notice to the appellant for levy of service tax on behalf of M/s.General Electric Inc., USA with whom, there is a long term maintenance contract. According to the learned counsel, the service provider has already obtained registration with the service tax Commissionerate at Delhi and as such, the appellant is not liable to pay service tax. The learned counsel further submitted that the first respondent without any jurisdiction issued notice to the appellant without calling upon the second respondent to produce the accounts relating to the service tax payable by the service provider.

3. The appellant, who is engaged in the generation of electricity in his power plant at Karuppur near Thanjavur entered into an agreement with M/s.General Electric Inc., USA for long term maintenance of their plant. The service provider earlier raised invoices on the appellant for maintenance charges on quarterly basis in US dollars. The service provider has also collected the service tax component as applicable in India from the appellant in US dollars in the very same invoice. It is the case of the appellant that both maintenance charges and service component were paid to the service provider in US dollars. Subsequently, the service provider opened its Indian branch office in Gurgaon and obtained registration under service tax. The service provider is paying service tax to the second respondent.

4. While so, the first respondent issued notice to the appellant to show cause as to why the company should not be directed to pay the service tax. The appellant without submitting reply filed the writ petition to quash the show cause notice dated 15 October 2015 on the ground of jurisdiction. The learned single Judge was of the view that the matter requires consideration of evidence.

5. The proceedings in question is only a show cause notice. The appellant cannot be heard to say that the first respondent has taken a decision to levy service tax and the explanation even if submitted to the show cause notice would be an empty formality.

6. The learned counsel for the appellant has been harping on the point that everything would come to an end in case notice is issued to the second respondent. Even before the statutory authority, it would be possible for the appellant to produce materials to show that the service provider has already paid the service tax. It is also open to the appellant to request the appellate authority to issue summons to the second respondent for cross verification with regard to payment of service tax by the service provider. There are no materials produced by the appellant to bypass the statutory remedy available under the Act. We are therefore of the view that the learned single Judge was justified in directing the appellant to avail the statutory remedy.

7. In the result, the intra court appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.Commissioner of Service Tax-II,
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Anna Nagar, Chennai - 600 040.

2.Superintendent of Central Excise (Rage 87)
Service Tax Division XVIII
Service Tax Commissionerate Delhi IV
CR Building I P Estate,
New Delhi 110 022.

+1cc to Mr.A.P.SRINIVAS Advocate, S.R.No. 83455

W.A No.479 of 2016

RK(CO)
TR(14/12/2017)