In the High Court of Judicature at Madras

Dated: 21.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.43572 of 2016
and
WMP Nos.37400 and 37401 of 2016

D.Sekhar .... Petitioner

Vs.

1.The Joint Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
No.1, Goubert Avenue (Beach Road),
Puducherry.

2.The Chief General Manager,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records relating to the order in original No.149/2016-C.EX dated 29.09.2016 passed by the first respondent and quash the same as illegal, violative of principles of natural justice.

For Petitioner : Mr.M.A.Mudimannan

For Respondents : Mr.A.P.Srinivas for R1
R2- formal party

O R D E R

The petitioner is aggrieved against the order in original dated 29.09.2016 passed by the first respondent.

2.Heard the learned counsel appearing for the petitioner and the learned counsel for the first respondent. The second respondent is only a formal party, to whom the petitioner has provided some service.

3. By consent of parties, the main writ petition is taken for final disposal, since the issue involved in this case lies in a narrow campus.

4.The petitioner got registered and obtained Service Tax Registration under the category of “maintenance or repair service". The first respondent issued a show cause notice on 14.10.2015, calling upon the petitioner to show cause as to why an amount of Rs.47,35,914/- should not be demanded as differential service tax amount payable for the period from 2010-11 to 2013-14. The petitioner vide letter dated 16.10.2015, citing some health grounds, sought 30 days time to appear with particulars. Accordingly, the personal hearing fixed on 18.08.2016, was adjourned to 30.08.2016, at the request of the petitioner. Again, the personal hearing was fixed on 20.09.2016, on which day, one K.Srinivasan, the Manager of the petitioner appeared in personal. It is stated that the said representative, who appeared for personal hearing, sought 10 days time to produce the invoices, agreements and receipts in support of their contention. However, the impunged order came to be passed on 29.09.2016, without even waiting for the petitioner to file such documents within the time of 10 days. It is stated that the petitioner, has in fact appeared on 30.09.2016, with all the details and however, he was informed that already an order came to be passed already on 29.09.2016 itself. Therefore, the present writ petition is filed challenging the impugned order mainly on the ground of violation of the principles of natural justice.

5.Learned counsel appearing for the petitioner submitted that once the first respondent has granted 10 days time on 20.09.2016 for production of the relevant documents viz., invoices, agreements and receipts, ought to have waited till the 10th day for the petitioner to respond. Therefore, he contended that the order passed on the 9th day viz., 29.09.2016, is undoubtedly against the principles of natural justice.

6.On the other hand, the learned counsel for the first respondent submitted that no such time was granted to the petitioner as prayed by them on 20.09.2016. Therefore, he submitted that when personal hearing was given to the petitioner and adjourned such hearing on two occasions at the instance of the petitioner, he cannot make a complaint that he was not given an opportunity of personal hearing.

7.Heard both sides.

8.The grievance of the petitioner in this writ petition is that the first respondent has passed the impugned order without even waiting for the petitioner to respond within the time of 10 days as granted on 20.09.2016, for production of material documents viz., invoices, agreements and receipts. The petitioner also filed a Rectification Application on 14.11.2016, wherein he has specifically stated that his representative appeared on 30.09.2016 with relevant documents and however, he was informed that the order in original was passed already on 29.09.2016 itself.

9.No doubt, it is contended by the learned counsel for the first respondent that no such time was granted to the petitioner. But perusal of the impugned order would show that the contention of the learned counsel for the first respondent is not factually correct, as it is very clear from the reading of paragraph No.7 of the order that on 20.09.2016, the Manager of the petitioner has appeared for personal hearing and sought for 10 days time for production of invoices, agreements and receipts and that the first respondent has in fact granted such time. Even though the impugned order does not speak specifically as though such request was granted, the entire reading of the paragraph No.7 would show that the first respondent, had in fact granted such time. For proper appreciation, paragraph 7 of the impugned order is extracted as hereunder:

> "7.Personal hearing was fixed on 18.8.2016 and the assessee vide letter dated 18.8.2015 sought for another PH. Another PH was fixed on 30.8.2016 and assessee vide letter dated 29.8.2016 sought to fix PH after 15.9.2016. Personal hearing was fixed on 20.09.2016 and Shri K.Srinivasan, Manager appeared for P.H. In the PH the manger submitted that after reverse charge mechanism whatever the tax liability, he had already paid it and when asked about details w.r.t to invoices and agreements and receipts, he submitted that he would submit the same within 10 days. Till date, no reply was received."

10.Therefore, it is evident that the petitioner's representative appeared on 20.09.2016 and sought for 10 days time for production of those documents and that the respondent has also granted such time. However, the fact remains that the impugned order came to be passed on the 9th day itself, viz.,29.09.2016. As rightly contended by the learned counsel for the petitioner, the first respondent has not waited for the petitioner to submit those materials within the time granted and therefore, the impugned order violates the principles of natural justice.

11.Considering the above stated facts and circumstances, I am of the view that the petitioner must be given one more final opportunity for placing all the materials, for the first respondent to consider and decide the matter on merits. Accordingly, the writ petition is allowed and the impugned order in original is set aside and the matter is remitted back to the first respondent for passing a fresh order, after giving due opportunity of personal hearing to the petitioner. Needless to say that the petitioner shall not seek any further time. The petitioner or his representative has to appear before the first respondent on 10.04.2017, with all relevant materials and documents. The first respondent shall hear the petitioner or his representative on the said day and thereafter, pass the order in original on its own merits and in accordance with law within a period of four weeks thereafter. It is made clear that this court has not expressed any view on the merits of the claim made by the petitioner in respect of the order in original, as it is for the first respondent to consider and decide. No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Joint Commissioner of Central Excise,
Office of the Commissioner of Central Excise,
No.1, Goubert Avenue (Beach Road),
Puducherry.

2.The Chief General Manager,
Neyveli Lignite Corporation Ltd.,
Neyveli, Cuddalore District.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.17912

W.P.No.43572 of 2016

SK(CO)
GN(28/03/2017)