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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 706/2014

DEPARTMENT OF SERVICE TAX

..... Petitioner

Through: Mr. Amish Aggarwala & Mr. Satish Aggarwala, Advocates.

versus

SUNIL KUMAR DAHIYA & ANR

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **19.01.2017**

1. The petitioner has preferred the present writ petition to seek setting aside of the order dated 28.02.2014 passed by the learned Additional Sessions Judge–02/ FTC, New Delhi District, Patiala House Courts, Delhi, whereby the respondent accused were granted regular bail.

2. The submission of learned counsel for the petitioner is that the said order was passed by the learned ASJ on the basis of a false statement made by the respondents/ accused through their counsel to the effect that vide order dated 21.02.2014 passed in W.P. (C.) No.1251/2014 further recovery of service tax had been stayed.

3. The impugned order dated 28.02.2014 shows that the same was passed in the presence of learned counsel for the petitioner herein Mr. Satish Aggarwala, Senior SPP representing the Service Tax Department.

4. The order dated 21.02.2014 is also placed on record. A reading of the said order shows that the petitioners/ Vigneshwara Developwell Pvt. Ltd. and others had sought interim orders contending that there is every likelihood of the respondents herein being arrested and the property & assets of the petitioner company being subjected to coercive action, including attachment.

5. The Division Bench took note of the earlier order passed by the learned ASJ on 01.02.2014, which recorded that service tax liability claimed by the Service Tax Department/ Revenue was to the extent of Rs.7.71 Crores of which 50% had been deposited by the first petitioner company. The order of the Division Bench, inter alia, records to the effect that anticipatory bail had been granted and expresses the opinion that the respondent department besides honouring the anticipatory bail order would also not take personal action against the petitioners and that they should restrain their hands and not take any coercive action in the matter till the petition is taken up for hearing on the next date, which was fixed as 12.03.2014.

6. On a reading of the order dated 21.02.2014, it cannot be said that the learned ASJ was misled by the accused with regard to the purport of the order dated 21.02.2014. In any event, the accused cannot be tainted with an accusation of misleading the learned ASJ when the petitioner department

was also represented through their Senior SPP.

7. I may also observe that subsequent to the passing of the impugned order dated 28.02.2014, on 12.03.2014, the Division Bench disposed of the aforesaid writ petition. The operative part of the said order dated 12.03.2014 reads as follows:

> *"The limited relief that the petitioners had approached this Court for was to enable them some time to make payments in accordance with the proposals moved at. It is agreed by both the counsel that the proposal accepted by the respondents in the form of an undertaking furnished to the Court required the petitioners to clear Rs.7.71 crores within 90 days effective from 29.01.2014. That period has not yet expired. The petitioner submits that substantial amounts have been paid. In these circumstances the Court is of the opinion that the interim order made on 21.02.2014 should be made absolute till the expiry of the 90 days period. In case, the entire payment is made before that period there is no question of any coercive step. However, if there is any shortfall, such action as is warranted shall be taken by the respondents in accordance with law. This is also subject to the further direction that the petitioners shall cooperate in the ongoing investigations in this regard. The petitioners or such of their Directors or those who are required to participate in the investigation shall present themselves before the Superintendent, Service Tax, Delhi on 20.03.2014 at 11:00 a.m. The writ petition is dismissed with the above terms, leaving all rights and contentions of the parties open."*

8. On a query by the Court, learned counsel for the petitioner states that the accused made payment of the remaining amount and cleared the amount of Rs.7.71 Crores, though the same was not paid within 90 days effective from 29.01.2014.

9. The order dated 12.03.2014 itself provided the mechanism to be

adopted in the eventuality of the remaining amount not being paid by the accused. Since the remaining amount has admittedly been paid by them, even otherwise, there is no justification to seek setting aside of the order dated 28.02.2014, whereby the accused were granted regular bail.

10. There is absolutely no merit in this petition and the same is, accordingly, dismissed.

11. A copy of this order be communicated to the Commissioner of Service Tax, Department of Service Tax, New Delhi for his perusal and necessary corrective action to ensure that such like frivolous petitions are not filed before the Court.

12. It is made clear to the petitioner that on this occasion, the Court is refraining from imposing costs considering the fact that public money is involved but if such like petitions are again noticed by this Court, the Court would not refrain from imposing appropriate costs.

VIPIN SANGHI, J

JANUARY 19, 2017
B.S. Rohella