Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.257 OF 2018

M/s. Cobra Personnel & Intelligence
Service, 318, Mala Fountainhas,
Panaji, Goa 430 001,
(through its successor
Mr. Clayton Rodolfo Savio
Fernandes, son of late Shirlina Filomena
Vaz e Fernandes, aged 42 years,
Indian National
having office at the above address.) …... Petitioner.

Versus.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001.

2. Additional Commissioner,
Central Excise & Service Tax, Goa,
ICE House, Patto Plaza,
Panaji, Goa 403 001.

3. Assistant Commissioner,
Central CST and Officer under him,
Division-II, 7th Floor, GST Bhavan,
Patto Plaza, Panaji, Goa 403 001. …. Respondents.

Mr. C.A. Ferreira, with Mr. Rajiva Srivastava, Advocate for the Petitioner.

Ms. Asha Dessai, Standing Counsel for the Respondents.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 18 April 2018.

ORAL JUDGMENT : (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. The respondents waive service. Taken up for final disposal.

2. The Petitioner has challenged the order dated 4 September 2015, passed by Respondent No.2-Additional Commissioner of Central Excise & Service Tax, Goa, to the extent of adjustment of the second installment of service tax.

3. The Petitioner is a proprietary concern, providing security services. The petitioner concerned belonged to Mrs. Shirlina Filomena Vaz e Fernandes, who was looking after the establishment. She suffered from cancer and subsequently, passed away on 18 July 2017. A show cause notice dated 27 June 2013 was served on the Petitioner in respect of the service tax dues. The Petitioner responded to the notice and further proceedings ensued.

4. Detailed facts are not necessary as the scope is limited in view of the submissions of the Petitioner. Mr. Ferreira, the learned Counsel for the Petitioner submitted that the deposit of ₹ 1120101/- made by the Petitioner was wrongly referred in the record of the Authorities as ₹ 120101/-, and it is because of a typographical error in the record of the Respondents, the further liabilities have arisen for the Petitioner.

5. A reply affidavit has been filed by the Assistant Commissioner, wherein a preliminary objection has been taken by the Respondent that the Petitioner has a remedy under Section 74 of the Finance Act, 1994 wherein the Central Excise Officer is empowered to rectify a mistake in the order. The preliminary objection taken reads thus :

> *"II. The Revenue submit that the petition is not maintainable as there is an alternate remedy available under the Finance Act, 1994 which the petitioner has not availed of. As per section 74 the Finance Act, 1994 the petitioner's grievances can be redressed by filing an application for rectification within 2 years of the passing of the order and in the alternative the petitioner could have filed an appeal before the Commissioner of Central Excise (Appeals) in terms of section 85 of the Finance Act, 1994."*

This has been reiterated by Ms. Dessai, learned Standing Counsel for the Respondents.

5. Mr. Ferreira submits that the Petitioner, in fact, had sought such a rectification within the period of two years as stipulated, on 20 August 2016. The learned Counsel has relied upon a the letter of 20 August 2016 which is annexed at Exhibit "F" to the Petition.

6. We have gone through the document dated 20 August 2016. In the second para of the document, the Petitioner had called upon the Authorities to verify the office record and rectify the error. Though it is the contention of Ms. Dessai that this document is more of a representation than an application, we cannot overlook the fact that the proprietor of the firm, a lady was suffering from cancer when she made the representation. Further more, Section 74 does not contemplate any particular format as such, empowering the Central Excise to rectify the mistake on his own and, if any mistake is brought to his notice by the Assessee. We are informed by Mr. Ferreira that this representation/rectification application, dated 20 August 2016 has not yet been decided.

7. That being the position, and in view of the preliminary objection raised by the Respondents, the Petition can be disposed of

by directing the Respondent-Authority to decide the representation dated 20 August 2016. The Officer concerned, will also go through the copy of the Petition wherein exact nature of the rectification has been emphasized by the Petitioner. The concerned Authority will decide the application/representation of the Petitioner dated 26 August 2018 within a period of eight weeks from today, in accordance with law. The concerned Authority will also look into the Memo of the Petition wherein details of the clarification have been explained

8. Rule made absolute in the above terms. No costs.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***