In the High Court of Judicature at Madras

Dated : 18.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1092 of 2018 & WMP.Nos.1318 & 1319 of 2018

R.Kanagavel ...Petitioner

Vs

1.The Assistant Commissioner of Central Excise, No.1, Vallalar Nagar, Manjakuppam, Cuddalore.

2.The Chief General Manager (Finance), Corporate Office, Neyveli Lignite Corporation Ltd., Neyveli. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the notice of demand dated 10.11.2017 in C.No.IV/16/STC/395/2009-Adjn. issued under Section 87(b)(i) of the Finance Act by the 1st respondent addressed to the 2nd respondent together with Order in Original No.19/2011 ST dated 02.6.2011 issued by the 1st respondent and quash the same as illegal and unsustainable by virtue of Section 97 of Finance Act, 1994.

For Petitioner : Mr.K.Jayachandran
For Respondent-1 : Mrs.R.Hemalatha, SPC

ORDER

Mrs.R.Hemalatha, learned Senior Panel Counsel accepts notice for the first respondent. Heard both. In the light of the orders this Court proposes to pass in this writ petition, notice to the second respondent is dispensed with. Considering the issue involved, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the notice dated 10.11.2017 issued under Section 87(b)(i) of the Finance Act, 1994 addressed to the second respondent by the first respondent demanding payment of the amount, which had been quantified as service tax payable by the petitioner pursuant to Order in Original No.19/2011 ST dated 02.6.2011.

3. Admittedly, the petitioner did not respond to the show

cause notice issued by the first respondent. Consequently, the first respondent proceeded ex parte and passed the order of adjudication. Only after the demand has been sent to the second respondent, the petitioner has approached this Court by filing this writ petition.

4. The learned counsel for the petitioner would submit that the petitioner has fallen sick and bedridden and is taking treatment at the Apollo Speciality Hospital, Chennai and that his son is unaware of the transactions done by the petitioner. According to the petitioner, on receiving a copy of the impugned demand notice, the petitioner's son preferred an appeal as against the order of adjudication before the Appellate Authority with a delay of three years and such appeal cannot be entertained, as it is beyond the period of limitation prescribed under the said Act.

5. The sheet anchor of the petitioner rests upon the communication given by the second respondent to the petitioner dated 06.8.2014, which reads as follows :

> "Sir,
>
> Sub: Service Tax - reg.
>
> Ref : Lr.No.NIL dated 05.8.2014
>
> Please refer to your letter cited above.
>
> The work indicated in the annexure to show cause notice No.175/2009 dated 14.10.2009 issued by the Superintendent of Central Excise, Service Tax Cell, Cuddalore to you for 'AMC of roads inside mines zone-A' in Mine I work was not awarded to you by NLC during the year 2008-09.
>
> It is ascertained that the contract Agt.No. GM/MI/AMC/SMD/20/2008-09 regarding the 'Biennial Maintenance of roads inside mines-zone-A' in Mine I was awarded to Shri.R.Ramadas."

6. The show cause notice dated 14.10.2009 was issued to the petitioner based on the information furnished by the Neyveli Lignite Corporation that the petitioner had been awarded the contract for providing services such as 'Management, Maintenance and Repair Services' and had received a total amount of Rs.15,14,939/-. The petitioner did not respond to the said show cause notice. Consequently, an ex parte adjudication order was passed. In terms of the letter dated 06.8.2014 given by the second respondent, it is seen that the work indicated in the show cause notice dated 14.10.2009 issued by the first respondent herein, was not awarded to the petitioner, but awarded to one Mr.R.Ramadas.

7. Thus, it appears that there is a mistake, which had occurred even at the stage of issuance of the show cause notice. However, had the petitioner been vigilant, he could have placed necessary material to show that he is not liable to pay the

service tax as demanded by the first respondent. Nevertheless, due his ailment and since he is bedridden, probably he was unable to take effective steps. Thus, taking note of the communication given by the second respondent dated 06.8.2014 referred to above, this Court is inclined to grant one more indulgence to the petitioner to place the facts before the first respondent. This is more so because the show cause notice itself came to be issued based on the information furnished by the Neyveli Lignite Corporation and as of now, the Neyveli Lignite Corporation states that no such contract was awarded to the petitioner, but was awarded to one Mr.R.Ramadas. Thus, adjudication has to be redone by considering the material that may be placed by the petitioner before the first respondent.

8. Accordingly, the writ petition is allowed and the impugned notice of demand dated 10.11.2017 is set aside. Consequently, Order-in-Original dated 02.6.2011 is also set aside and the matter is remanded to the first respondent for de novo consideration. The petitioner is granted 15 days' time to submit his objections to the show cause notice dated 14.10.2009, enclose all the documents, which he proposes to rely upon and on such furnishing, the first respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and re-adjudicate the case in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The Assistant Commissioner of Central Excise,
No.1, Vallalar Nagar,
Manjakuppam, Cuddalore.

2.The Chief General Manager (Finance),
Corporate Office, Neyveli Lignite
Corporation Ltd., Neyveli.

+1 CC to Mr.K.Jayachandran Advocate SR.NO.3578
+1 CC to Mrs.R.Hemalatha, SPC Advocate SR.NO.3926

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WMP.Nos.1318 & 1319
of 2018

LRS(CO)
VC (06/02/2018)