IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23524 of 2014
and
MP.No.1 of 2014

V.Vajjiram ... Petitioner

Versus

1.Union of India,
Rep.by Secretary to Government,
Ministry of Finance,
New Delhi.

2.The Commissioner,
Central Excise and Service Tax,
Vellore, Vellore District.

3.The Commissioner,
Walajahapet Municipality,
Walajahapet,
Vellore District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the entire records in pursuant to two final notices issued by the third respondent to the petitioner vide Na.Ka.No.2676/2011/A1 dated 04.08.2014 insofar as demanding the petitioner to pay service tax for the lease given to the petitioner for collecting toll from the persons doing business by setting up temporary shops within the boundary of the third respondent municipality and also for lease of marriage hall belonging to the third respondent granted to the petitioner is concerned.

For Petitioner : Mr.T.P.Prabakaran

For R1 and R2 : No Appearance

For R3 : Mr.P.Srinivas

O R D E R

The two final notices in respect of non payment of the Service Tax of the writ petitioner issued by the third respondent in proceedings dated 04.08.2014 are under challenge in this writ petition.

2. The writ petitioner is in occupation of running shop areas and collection of toll from the persons, who are doing business by setting up temporary shop within the territorial jurisdiction of the third respondent municipality and also for lease of marriage hall belongs to the municipality. The writ petitioner is liable to pay the service tax in accordance with the Act. There was a demand from the third respondent to pay service tax and the writ petitioner had failed to pay the same. The third respondent sent two final notices vide proceedings dated 04.08.2014. Challenging the two final notices dated 04.08.2014, the present writ petition has been filed.

3. The writ petitioner cannot question the disputed payment of service tax in accordance with law. If any disputes in respect of assessment, it is for the petitioner to submit his objections before the competent authority. However, the writ petitioner has not raised any such dispute in respect of quantum of assessment made in the impugned notices. Contrarily, the petitioner questioned the very power of the respondents in demanding the payment of service tax. This Court is of the opinion that the writ petitioner is liable to pay service tax in accordance with law, which can be intimated against through notices issued by the third respondent, seeking payment of service tax from the petitioner.

4. On receipt of final notices, the writ petitioner has to submit his explanation/objection, if any and instead of doing so, the writ petitioner has chosen to file the present writ petition. The opportunity provided by the authorities should be utilised by the petitioner and the service tax ought to have been paid by him before approaching this Court by way of this writ petition under Article 226 of the Constitution of India.

5. In these circumstances, the writ petitioner is at liberty to submit the explanation/objection before the respondents, in respect of demand made in the impugned notices dated 04.08.2014. If any such explanation or objection is submitted by the writ petitioner, then the respondents shall consider the same and pass final orders in respect of payment of service tax by the writ petitioner.

6. With these observations, the Writ petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

klt/ah

To

1.The Secretary to Government,
Union of India,
Ministry of Finance,
New Delhi.

2.The Commissioner,
Central Excise and Service Tax,
Vellore, Vellore District.

3.The Commissioner,
Walajahapet Municipality,
Walajahapet,
Vellore District.

+1cc to Mr.T.P.Prabakaran, Advocate in sr.no.31886
+1cc to Mr.P.Srinivas, Advocate in sr.no.32467

W.P.No.23524 of 2014

nr 16/05/2018