IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34005 of 2014
and
M.P.No.1 of 2014

Shree Vijayalakshmi Charitable Trust,
Rep by its Managing Trustee,
A.Senthil Kumar,
Office at No.107/A, Senguptha Street,
Ram Nagar, Coimbatore-641 009. ... Petitioner

vs.

1. Union of India,
Rep by its Secretary to Govt of India,
Finance Department,
New Delhi - 110 001.

2. Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance,
New Delhi - 110 008.

3. Commissioner of Central Excise and Service Tax,
Race Course Road, Coimbatore.

4. The Assistant Commissioner if Customs,
Central Excise and Service Tax,
Coimbatore III Division, Coimbatore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Declaration that the transactions involved in terms of the said two agreements is not service much less the taxable service and it is also not provided by the petitioner trust consequently the very levy and collection of service tax under VCES scheme is unlawful and opposed to constitutional propriety and further forbearing the 4th respondent not to insist for the payment of balance amount as per his letter No.IV/16/104/2013-ST (VCES) dated 07.11.2014.

For Petitioner : M/s. K.K.Sivashanmugam

For Respondents 1- 4 : Mr. A.P.Srinivas
Standing Counsel for Customs

ORDER

The writ of declaration filed to declare that the transactions involved in terms of the said two agreements is not service much less taxable service and it is not also not provided by the petitioner Trust consequently the very levy and collection of service tax under VCES scheme is unlawful and opposed to Constitutional propriety and further forbearing the $4^{th}$ respondent not to insist for the payment of balance amount as per his letter No.IV/16/104/2013-ST (VCES) dated 07.11.2014.

2. The learned counsel appearing on behalf of the writ petitioner vehemently contended that the writ petitioner is a public charitable trust duely created under registered deed of trust dated 09.09.1992. They are doing charity by developing educational institutions and providing free education to poor people. The learned counsel for the writ petitioner is of an opinion that, the writ petitioner is not at all liable to pay service tax as provided under the Central Excise and Service Tax Act.

3. However, on account of the pressure caused to the writ petitioner Trust they have opted to pay the Service Tax as per the Service Tax Voluntary Compliance Encouragement Scheme,2013. The scheme was introduced by the Government of India enabling the Service Tax providers to pay Service Tax as a special scheme. As admittedly, the writ petitioner had opted to pay the Service Tax under the special scheme. Pursuant to the option, the writ petitioner had already paid 50 percent of the Service Tax due to the department.

4. The present writ petition has been filed challenging the communication issued by the respondents in proceeding dated 07.11.2014. The communication states that the office of the respondent has not received the payment particulars of remaining part of the Service Tax from the writ petitioner. Thus, the writ petitioners are directed to produce the challans evidencing the payment of balance 50 percent amount. If no payment has been made the same should be paid along with the interest on or before 31.12.2014 and submit the copy of the challan to the office of the respondent.

5. The impugned letter states that the writ petitioner has not paid the balance 50 percent of the Service Tax due to be paid as per the Special scheme opted by the writ petitioner. In other words, the letter dated 07.11.2014 is an information provided to the writ petitioner to pay the balance Service Tax amount of 50 percent as per the scheme opted. The same cannot be

construed as a coercive action or an order affecting the rights of the writ petitioner. Such an information provided is nothing but a reminder to the writ petitioner to pay the balance 50 percent amount due to the department.

6. This being the factum, the arguments now advanced by the learned counsel for the writ petitioner that the writ petitioner is not at all liable to pay Service Tax deserves no merit consideration. The writ petitioner having opted for the scheme had already paid 50 percent of amount of the Service Tax to the department. Then the writ petitioner is liable to pay the balance amount. The learned Standing Counsel appearing on behalf of the respondents cited clause 110 and 111 of Service Tax Voluntary Compliance Encouragement Scheme, 2013 are reads as under:-

> "110. Tax dues declared but not paid. - (1) where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of Section 87 of the Chapter.
>
> 111. Failure to make true declaration.-(1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid."

7. If at all, the writ petitioner failed to make true declaration then action can be initiated by the department in accordance with the provisions of the Act. The scheme was introduced for the benefit of the tax payers and the writ petitioner having opted the scheme now cannot go back and say that the petitioners are not liable to pay the Service Tax at all. This apart, the learned Standing Counsel brought to the notice of this Court that the writ petitioner has not cooperated for the assessment on account of the pendency of the writ petition. Thus the department is unable to assess the true income of the petitioner's Trust and pass assessment order.

8. This being the facts and circumstances of the case, this Court is of an opinion that, mere information provided to the writ petitioner to pay the balance service Tax amount of 50 percent to be paid as per the option exercised by the writ petitioner. Therefore, the writ petition is devoid of merits and writ petitioner has not established any cause of action for the purpose of considering the relief as such sought for in this writ petition.

9. The writ petitioner cannot be said to be an aggrieved person at all. The only ground raised is that the writ petitioner opted the scheme under coercion. However, such coercion is an afterthought and the same cannot be considered at this point of time. Therefore the writ petitioner is liable to pay the balance amount of 50 percent of Service Tax as per the option exercised under the Service Tax Voluntary Compliance Encouragement Scheme,2013.

10. The respondents are directed to initiate all further action to recover the balance 50 percent of Service Tax amount as per the conditions stipulated in the scheme and as well as under the provisions of the Act and Rules. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary,
Union of India,
Finance Department,
New Delhi - 110 001.

2. Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance,
New Delhi - 110 008.

3. Commissioner of Central Excise and Service Tax,
Race Course Road, Coimbatore.

4. The Assistant Commissioner if Customs,
Central Excise and Service Tax,
Coimbatore III Division, Coimbatore.

+1cc to M/s. K.K.Sivashanmugam, Advocate sr.no.72926
+1cc to Mr. A.P.Srinivas, Advocate sr.no.73134

W.P.No.34005 of 2014

sj(co)
nr 28/11/2018