



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No. 4500 of 2011

and

M.P. (MD) No. 1 of 2011

V.Kaliraj

.. Petitioner

Vs.

1.The Superintendent of Central Excise,
Virudhunagar I Range,
Virudhunagar,
Virudhunagar District.

2.The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
Harish Chandra Mathur Lane,
Janpath,
New Delhi - 1.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 1st respondent in his proceedings O.C.No.156/2011 dated 04.02.2011 and quash the same as illegal and without jurisdiction.

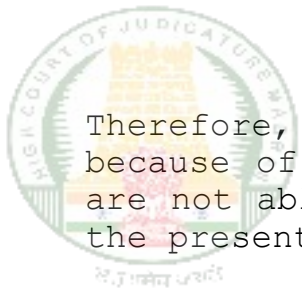
For Petitioner : Mr.B.Saravanan

For Respondents : Mr.R.Nandakumar for R.1
No appearance for R.2

ORDER

Challenging the order of the first respondent, dated 04.02.2011, directing the petitioner to pay a sum of Rs.4,04,845/-, as service tax, the present writ petition has been filed by the petitioner on the ground that the impugned order was passed by the first respondent, without there being any notice / opportunity of personal hearing, whatsoever.

2. When the matter was taken up for hearing today, the learned Counsel for the first respondent, on instructions, submitted that the order impugned in the present writ petition is nothing but a communication, followed by which, a show cause notice will be issued and after hearing the petitioner, final orders will be passed.



Therefore, the present writ petition itself is not warranted and because of the interim stay granted at the time of admission, they are not able to proceed further and hence, he prayed for dismissing the present writ petition.

3. Heard the learned Counsel on either side and perused the records.

4. The impugned order, in the opinion of this Court, is self explanatory in nature, whereby, the petitioner was directed to pay service tax. However, there is no whisper as to the issuance of any prior notice or opportunity to the petitioner. For better understanding, the impugned order, dated 04.02.2011, is extracted as follows:

"Kindly refer to the audit of your accounts for the petitioner from 10/2005 to 09/2010 by the Internal Audit Party, Madurai, Central Excise Commissionerate during 08 & 09.12.2010 in respect of 'Site Preparation and Clearance' service provided by you.

During the course of audit, it has been observed that you have paid service tax from 11.08.2007 onwards. However, it has been ascertained that you are providing the service from 1997 itself. The Site Preparation and Clearance service is taxable w.e.f. 16.06.2005. You have not discharged your service tax liability for the period from 01.10.2005 to 10.08.2007 which works out to Rs.4,04,845/- as per worksheet attached hereto.

Hence, you are hereby requested to pay the Service Tax along with interest immediately and send the paid challan to this office."

5. Be that as it may, in view of the submission made by the learned Counsel for the first respondent that the impugned order is only a communication and final orders will be passed, after issuing show cause notice and affording an opportunity of personal hearing to the petitioner, this writ petition is disposed of, with a direction to the first respondent to issue show cause notice and after affording an opportunity of personal hearing to the petitioner, pass final orders, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-II)



gk

To

The Superintendent of Central Excise,
Virudhunagar I Range,
Virudhunagar,
Virudhunagar District.

+1cc to Mr.R.Nanda Kumar, Advocate in SR No.83765
+1cc to Mr.K.Govindarajan, Advocate in SR No.83633

W.P. (MD) No. 4500 of 2011
and
M.P. (MD) No. 1 of 2011

NM/RSK/SAR 2/09.10.18/3P/4C