THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION NO.16474 of 2017

ORDER: (per SK,J)

The petitioner assails the Order-in-Original No.21/2013 dated 31.10.2013 passed by the Additional Commissioner, office of the Commissioner of Customs, Central Excise and Service Tax, Tirupati, the third respondent, raising against him a demand of Rs.10,44,472/- along with an equal amount towards penalty apart from other penalties/charges.

Perusal of the impugned Order-in-Original shows that the third respondent took into account the gross amount paid by the Tirumala Tirupati Devasthanams (TTD), as per the information submitted by it, and the same was taken as the basis for calculating the service tax liability of the petitioner.

Sri K.S.Murthy, learned counsel for the petitioner, would bring it to our notice that an identically situated assessee who suffered a demand for payment of service tax along with penalty, in relation to the service rendered to the TTD, came before this Court in W.P.No.7581 of 2017 assailing the Order-in-Original dated 31.10.2013 passed against him and secured relief. Learned counsel placed before us a copy of the order dated 27.03.2017 passed by this Court in W.P.No.7581 of 2017. Challenge was made by the petitioner therein to the Order-in-Original No.24/2013 dated 31.10.2013 passed by the Additional Commissioner, office of the Commissioner of Central Excise, Customs and Service Tax, Tirupati, raising a demand towards service tax along with penalties and charges. This Court took note of the grievance of the petitioner therein that the gross amount paid by the TTD was taken as the basis for calculating the service tax liability without reference to the fact that such gross amount would also take within its ambit the amounts paid by the TTD towards the cost of materials. This Court finally observed that as the authority had assessed the tax liability on the strength of the gross amount, the matter had to be remitted for finding out the portion out of the gross amount which is attributable to service rendered and the portion that is attributable to the cost of materials. The writ petition was accordingly allowed and the matter was remitted for consideration afresh permitting the petitioner therein to file his objections to the show cause notice within a time frame.

Sri B.Narasimha Sarma, learned senior standing counsel for the Revenue, would state that the Order-in-Original impugned in the present case has already been subjected to appeal and was confirmed by the appellate authority and thereafter, by the Customs, Excise and Service Tax Appellate Tribunal. He however does not dispute the fact that the dismissal of the appeals was not on merits but on the ground of delay alone. He also concedes that there is no distinguishable factor which differentiates the petitioner in the present case from the petitioner in W.P.No.7581 of 2017.

As we find from the impugned Order-in-Original that the third respondent assessed the tax liability of the petitioner on the strength of the gross amount paid by the TTD, we find no distinction between the case on hand and that in W.P.No.7581 of 2017. That being so, this writ petition also deserves to be allowed giving liberty to the petitioner to go before the authority and substantiate his plea with regard to the quantum of the gross amount which would be attributable to the cost of materials.

The writ petition is accordingly allowed setting aside the Order-in-Original No.21/2013 dated 31.10.2013 passed by the Additional Commissioner, office of the Commissioner of Customs, Central Excise and Service Tax, Tirupati. The matter is remitted to the said authority for consideration afresh. The petitioner shall file his objections to the show cause notice on or before 05.03.2018. Thereupon, the third respondent shall fix a date for personal hearing and on that date, the petitioner shall produce the documentary evidence in proof of his claim as to the quantum as well as the value of materials sold and delivered together with the proof of payment of value added tax, if leviable on those items. Upon consideration of all aspects, the third respondent shall pass orders afresh on merits and in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:05.02.2018

GJ