THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No.10165 OF 2017
AND
W.P.M.P.NO.12661 OF 2017 IN W.P.NO.10165 OF 2017

COMMON ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The grievance of the petitioner firm is with regard to the action of the Superintendent of Service Tax, Bhadrachalam Service Tax Range, Sarapaka, Bhadrachalam, the fifth respondent herein, in issuing notice dated 30.11.2016 to the General Manager (Finance), ITC Limited, Sarapaka, Bhadrachalam, under Section 87 of the Finance Act, 1994 (for short, 'the Act of 1994'), informing him of the service tax dues payable by the petitioner firm and requiring him to pay forthwith to the credit of the Central Government the recoverable service tax of Rs.38,06,575/- from out of the monies held by the ITC Limited and payable to the petitioner firm.

Sri K.Vijaya Kumar, learned counsel for the petitioner firm, would contend that the aforestated garnishee order which was passed by the Excise authorities was not preceded by any notice or adjudication as to the service tax liability of the petitioner firm.

Taking note of this very submission, the Division Bench, which heard this case earlier, required the Standing Counsel for the Revenue to furnish a tabulation indicating 1) the amount of liability towards service tax indicated in each of the ST3 returns filed by the petitioner firm and 2) the amounts remitted by the petitioner firm towards such liability.

Thereupon, the Revenue filed W.P.M.P.No.46114 of 2017 in this writ petition seeking to receive various documents, including a tabulation of service tax payable and paid, payment date, challan details and differential service tax. The said W.P.M.P. was ordered today separately and the documents filed were taken on record. Perusal of the tabulation filed by the Revenue reflects that the Excise authorities detailed the service tax liability of the petitioner firm for the Assessment Years 2010-11 to 2014-15 therein. However, various amounts which were not covered by the ST returns filed by the petitioner firm also find mention therein. The total service tax liability of the petitioner firm was quantified at Rs.85,92,723/-, whereas the service tax payable as per the returns filed by the petitioner firm amounted to Rs.37,13,339/-. According to the Revenue, the petitioner firm only paid Rs.37,13,337/- and there was also delay in making such payments. The end quantification by the Revenue is to the effect that the service tax payable in net was Rs.27,59,510/- and the interest payable thereon was Rs.10,44,565/-, along with late fee of Rs.2,500/- for the delay in filing the returns, aggregating to Rs.38,06,575/-.

Sri M.V.J.K.Kumar, learned standing counsel for the Revenue, would fairly concede that in so far as the various amounts mentioned in the table which are not relatable to the ST returns are concerned, no adjudication took place by putting the petitioner firm on notice as to its liability in relation thereto.

We find that several such amounts find mention in the table. For instance, for the year 2010-11, the sums of Rs.2,00,496/- and 47,440/-, which were not relatable to the returns filed by the petitioner firm, were mentioned. Similarly, for the year 2012-13, a sum of Rs.4,46,245/- was mentioned and for the year 2013-14, the sums of Rs.5,99,938/-, Rs.1,83,799/- and Rs.3,703/- were mentioned. In so far as the year 2014-15 is concerned, the sums of Rs.1,58,652/-, Rs.34,884/- and Rs.34,681/-

find mention. In effect, these amounts are now sought to be demanded from the petitioner firm towards its service tax liability without putting it on notice and without adjudicating its liability therefor.

Sri M.V.J.K.Kumar, learned counsel, would however state that under letter dated 16.03.2016, the petitioner firm itself requested the Commissioner, Customs, Central Excise and Service Tax, Hyderabad Commissionerate, to lift the impugned order passed under Section 87 of Act of 1994 and undertook to pay the balance amount as mentioned in the said letter in instalments. The balance sale tax to be paid, as per this letter, was quantified at Rs.41,26,510/-. Learned counsel would therefore assert that the petitioner firm itself conceded its liability.

However, we are not impressed.

The statutory authorities are required to abide by the due procedure in quantification of the liability and initiating measures for realization thereof. It is not open to the Excise authorities to quantify such liability behind the back of the petitioner firm and then take coercive measures to extract the same from it. We are not inclined to go into the issue as to why the petitioner firm was constrained to give such a letter of concession. The same would not have the effect of validating the illegality underlying the actions of the Excise authorities.

Be it viewed from any angle, the impugned order dated 30.11.2016 under Section 87 of the Act of 1994 is unsustainable and the same is accordingly set aside.

The petitioner firm filed W.P.M.P.No.12661 of 2017 seeking refund of the service tax amount of Rs.38,06,575/- along with interest thereon at Rs.10,44,565/-, already recovered from it.

It is to be noted that any action by the statutory authority must be based on legal foundations and as we find it to be completely lacking in the case on hand and there was no justification for the Excise authorities to initiate steps under Section 87 of the Act of 1994 or follow it up with coercive measures, we are of the opinion that the Revenue is not justified in retaining the monies of the petitioner firm which were illegally collected by it. The W.P.M.P. is accordingly ordered directing refund of the aforestated amounts.

It is however made clear that refund of the said amounts would not preclude the Excise authorities from initiating measures afresh strictly in accordance with the procedure laid down by law for recovering the dues, if any, after quantification thereof in accordance with law.

The writ petition is allowed to the extent indicated above.

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

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SANJAY KUMAR,J

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D.V.S.S.SOMAYAJULU,J

Date: 12.03.2018
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