THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.23603 OF 2018

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri Karan Talwar, learned counsel for the petitioner and Sri K.Lakshman, learned Assistant Solicitor General appearing on behalf of the respondents and, with their consent, the Writ Petition is disposed of at the stage of admission.

The question, which arises for consideration in this Writ Petition, is whether the first respondent was justified in issuing the impugned show cause notice without undertaking a pre-show cause notice consultation process as mandated by the CBEC in its Circular dated 21.12.2015. The first of the show cause notices was issued on 31.12.2015, and two show cause notices were issued thereafter, the latest of which was issued on 16.04.2018 which is impugned in this Writ Petition.

The Circular of the CBEC dated 21.12.2015 requires a pre-show cause notice consultation exercise to be undertaken before initiating proceedings under the Finance Act, 1994 for recovery of the service tax dues. The said Circular is binding on the respondent-officials.

When the matter came up for hearing earlier, Sri K.Lakshman, learned Assistant Solicitor General, sought time to obtain instructions. Thereafter, he submitted that the respondent-officials were constrained to initiate proceedings, for recovery of service tax dues from the petitioner, without complying with the pre-show cause notice consultative process stipulated in the CBEC Circular dated 21.12.2015 as the service tax assessment was likely to be barred by limitation.

An affidavit dated 09.08.2018 is filed by the General Manager of the Petitioner-company undertaking that, in case prior mandatory show cause notice consultation is undertaken by the respondent, the petitioner would not to press the point of the fresh show cause notice, under the category of dredging services for the financial year 2015-16, as being beyond the stipulated period of limitation of 30 months in terms of Section 73 read with Section 73(1)(a) of the Finance Act, 1994.

In the light of the undertaking affidavit filed on behalf of the petitioner-company, Sri K.Lakshman, learned Assistant Solicitor General, would fairly state that a pre-show cause notice consultation process would be undertaken by the respondents, and the petitioner would be issued a notice calling upon him to appear and participate in the pre-show cause consultative process. Sri Karan Talwar, learned counsel for the petitioner, would submit that it would suffice if the submission of the learned Assistant Solicitor General is recorded and the Writ Petition is closed.

In view of the undertaking affidavit filed on behalf of the petitioner dated 09.08.2018, we consider it appropriate to set aside the impugned show cause notice, and direct the respondent-officials to first comply with the requirement of the Circular dated 21.12.2015, undertake the pre-show cause notice consultative process and thereafter, if need be, initiate proceedings afresh for recovery of service tax dues, if any, in accordance with law.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

23rd August 2018
RRB