* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HON'BLE SRI JUSTICE P. KESHAVA RAO

+W.P.No.23639 of 2018

% Date: 12-12-2018

#Between:

P. Narasa Reddy, S/o. P.Konda Reddy,
Electrical Contractor, D.No.12/36,
Siddhavatam Road, Gandhi Nagar,
Badvel, Kadapa District, A.P.

….. Petitioner

And

1. Union of India, Ministry of Finance, Department of Revenue, rep. by its Secretary to Government, New Delhi.
2. The Commissioner of Central Excise & Service Tax (Appeals), Central Revenue Building, Kannavari Thota, Guntur, Andhra Pradesh.
3. The Assistant Commissioner, Customs, Central Excise and Service Tax, Kadapa District, Kadapa, A.P.

…. Respondents

! Counsel for the Petitioner : Mr. T. Vinod Kumar

^ Counsel for Respondents : Mr. M.V.J.K. Kumar Sr. S.C.

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> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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ORDER: (Per VRS,J)

Challenging an Order-in-Original passed by the 3rd respondent under Section 73(2), 75, 77(1) and 77 (2) of the Finance Act, 1994 read with the relevant Rules, a service provider has come up with the above writ petition.

2. Heard Mr. T. Vinod Kumar, learned counsel appearing for the petitioner and Mr. M.V.J.K. Kumar, learned Senior Standing Counsel for the department.

3. The impugned Order-in-Original is dated 07.03.2017. As against the said order, the petitioner did in fact file an appeal to the Commissioner (Appeals). But the Commissioner (Appeals) could not entertain the appeal in view of the fact that the appeal was filed beyond the condonable period of delay. Therefore, taking advantage of a Full Bench decision of this Court in Electronics Corporation of India v. Union of India[1] the petitioner has come up with the above writ petition challenging the Order-in-Original.

4. In cases of this nature, this Court will exercise caution while entertaining the writ petitions of persons, who fail to avail the alternative remedies available to them in law and thereafter come up with writ petitions challenging the original order. Nevertheless, the tests to be applied, to find out whether the order would be amenable to writ jurisdiction, are – (1) the violation of the principles of natural justice; (2)

[1] 2018 (3) TMI 767

the lack of jurisdiction; (3) the lack of authority on the part of the officer passing the orders, and the like.

5. In the case on hand, the short legal question raised by the learned counsel for the petitioner to show that the levy was without the authority of law is notification No.32/2010-ST, dated 22.06.2010.

6. The notification reads as follows:

> "Notification: 32/2010-ST, dated 22-Jun-2010
>
> Exemption to taxable service provided for distribution of electricity
>
> In exercise of the powers conferred by sub-section (1) of Section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the said Finance Act'), the Central government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by a distribution licencee, as distribution franchisee, or any other person by whatever name called authorized to distribute power under the Electricity Act, 2003 (36 of 2003), for distribution of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.
>
> 2. This notification shall come into force on the date of its publication in the Official Gazette."

7. There is no dispute about the fact that the petitioner is a service provider. If he is a service provider and if he is providing taxable service, the petitioner, according to the learned counsel, is entitled to the benefit of the notification. If he is in fact entitled to the benefit of the notification, then the levy under the impugned order would be without the authority of law. But this question has not been gone into in the impugned order, partly because of the default on the part of the petitioner himself, in having failed to reply to the show cause notice and in having failed to appear for personal hearing.

8. Therefore, we are of the considered view that one opportunity could be given to the petitioner with a direction to the 3rd respondent to examine the question of applicability of the aforesaid notification. Hence, the writ petition is allowed, the impugned order is set aside and the

matter is remanded back to the 3^{rd} respondent. The petitioner shall file a reply both to the show cause notice as well as to the reasons contained in the impugned order, on or before 31.12.2018. Thereafter, the 3^{rd} respondent shall fix a date for personal hearing and pass orders afresh. There will be no order as to costs.

9. As a sequel, pending miscellaneous petitions, if any, will stand closed.

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V. RAMASUBRAMANIAN, J.

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P. KESHAVA RAO, J.

12^{th} December, 2018
Js.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO

W.P.No.23639 of 2018

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