THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.30728 OF 2018

O R D E R

M/s Ultra Tech Cement, Malkhaid, is the contractor for Railways for transportation of coal, supplied by M/s Singareni Collieries Co., Ltd and the petitioner is the handling agent for loading of coal for M/s Ultra Tech Cement. Thus the petitioner is the subcontractor of M/s Ultra Tech Cement. The case of the petitioner is that though he worked for Ultra Tech Cement Company, paid charges directly to Railways and that along with writ petition, copy of the letter dated 26.06.2015, was filed, showing that demand draft for payment towards shunting charges to Assistant commercial Manager, South Central Railway, Secunderabad, was handed over by the petitioner. The further case of the petitioner is that the 3rd respondent – Senior Intelligence Officer, Directorate General of GST Intelligence, issued notice dated 02.07.2018, requiring the petitioner to submit certain documents for verification with regard to liability of service tax on the works undertaken by the petitioner during the period from 2013 to 2018. The said documents were directed to be furnished on or before 31.08.2018. The case of the petitioner is that he submitted all the documents to the 3rd respondent, except two documents i.e., copies of CENVAT invoices and worksheet of value and service tax. As the petitioner has executed the works of Railways, requested the 2nd respondent – LTC siding, represented by its In-charge Officer, South central Railways, Mancherial, to furnish duplicate receipts during the period from 2012 to 2018. Vide letter dated 02.08.2018, the 2nd respondent informed the petitioner that the receipts sought for by the petitioner cannot be furnished immediately and it will take probably more than three to five moths period to furnish the documents. The grievance of the petitioner is that 2nd respondent has not furnished the required documents and therefore, he is unable to submit the documents to the 3rd respondent to show his liability of service tax, but the 3rd respondent is contemplating to take coercive steps for recovery of tax. Therefore, the present writ petition is filed for a direction to the 2nd respondent to furnish duplicate railway receipts for the period from 2012 to 2018.

Learned counsel for the petitioner reiterating the above averments, submit that though the petitioner is the subcontractor, paid charges directly to the Railways and as there is legal dispute between the petitioner and the principal contractor M/s Ultra Tech, the said firm is not furnishing the above said documents and, therefore, the petitioner sought for vouchers/ receipts from the 2nd respondent, and the said respondent vide letter dated 2.8.2018 informed that it will take three to five months for furnishing the required documents. The learned counsel contends that the information furnished by the railway authorities, can be made use of as evidence under Section 191 of the Railways Act, 1989. Therefore, he seeks for a direction to the 2nd respondent to furnish the documents sought for by the petitioner, as expeditiously as possible. He further submits that if all the documents are not available, documents which are available, may be directed to be furnished to the petitioner.

The Senior Divisional Commercial Manager, Central Railway, Secunderabad, filed counter affidavit on behalf of the 2nd respondent. Sri T.S.Venkata Ramana, learned Standing Counsel for Railways, based on the averments made in the counter affidavit, submits that petitioner has not done any contract directly with Railways and he is the handling agent for loading of coal for M/s Ultra tech Cement, Malkhaid and the coal was supplied by M/s Singareni Collieries Co., Ltd., and that M/s Ultra Tech Cement, paid all the applicable railway freight surcharges and service tax to the railways and thus, it cannot provide any information in this regard, to third parties. He submits that petitioner sought to provide the duplicate railway receipts pertaining to the contract for loading of coal from CCC siding, which was done by M/s Ultra Tech Cement, Malkhad and to submit in the department for reconciliation of quantity and freight, but he did not state that the said documents are required for submitting to the 3rd respondent to show his extent of service tax liability. Thus, misrepresenting the purpose, he sought for the documents. He further submits that petitioner is seeking to provide duplicate RRs pertaining to the period from 2012 to 2018, for six years. As per Railway Guidelines, record copies of RRs are preserved only for a period of three years. In this context, the 2nd respondent vide letter dated 2.08.2018 informed the petitioner that it is difficult to trace old records and that it probably takes more than three to five months. He contended that the petitioner by misrepresenting the purpose, could obtain the reply dated 2.8.2018 from the 2nd respondent. He further submits that the 2nd respondent is not the competent authority to inform the petitioner vide letter dated 2.08.2018 and the Senior Divisional Commercial Manager, South Central Railway, Rail Nilayam, Secunderabad, is the competent authority on behalf of the Railways and hence the information furnished by the 2nd respondent is not authenticated. He further submits that as per Para 1458 of Indian Railway Commercial Manual, Volume – II, issuance of duplicate invoices and railway receipts, is forbidden, therefore, the letter dated 02.08.2018, furnished by the 2nd respondent, who is not the competent authority, cannot have any consequence. Therefore, he seeks to dismiss the writ petition.

From the above it could be seen that petitioner was the handling agent of M/s Ultra Tech Cement, Malkhaid, which was given the contract for transportation of coal. Petitioner claims that he paid charges to the Railways directly and sought to rely on letter dated 26.06.2015, where under the Assistant Commercial Manager, South Central Railway, Secunderabad, was informed with regard to payment of shunting charges by the petitioner. Further, the 2nd respondent vide communication dated 02.08.2018, informed the petitioner that the railways receipts sought for by the petitioner cannot be provided immediately and it is very difficult to trace old records and it may probably take more than three to five months period. Issuance of communication dated 02.08.2018 is not denied, but the learned Standing Counsel for Railways only disputes the competency of the officer to address such letter and he states that the competent authority is the Senior Divisional Commercial Manager, South Central Railway, stationed at Rail Nilayam, Secunderabad and he submits that as per railway guidelines, record copies of RRs are preserved only for a period of three years and, therefore, the documents which are sought for by the petitioner, which are of more than three years old, cannot be furnished.

In these circumstances, it is open to the petitioner to make representation to the competent authority i.e., Senior Divisional Commercial Manager, South Central Railway, Rail Nilayam, Secunderabad, seeking the duplicate receipts for the relevant period, and it is for the said authority to consider the same in the light of circulars in vogue and pass appropriate orders within a period of four weeks from the date of receipt of representation.

Writ petition is disposed of accordingly.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:17—09—2018
AVS