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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3675/2018

SAMEER BUILTAID ..... Petitioner

Through Mr. Prabhat Kumar and Mr. Shivam Tyagi, Advocates.

versus

OFFICE OF THE COMMISSIONER OF CENTRAL TAX (DELHI EAST) ..... Respondent

Through Mr. Harpreet Singh, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **16.04.2018**

This is second round of litigation by the petitioner-M/s. Sameer Builtaid Pvt. Ltd. The petitioner had earlier filed W.P. (C) No. 3417/2017, inter alia, making various allegations including that no show cause notice had been issued by the Commissioner of Service Tax.

2. W.P. (C) No. 3417/2017 was disposed of vide order dated 22nd May, 2017, which reads as under:-

> "1. Learned counsel for the Petitioner has brought a demand draft (DD) in the sum of Rs.10 lakhs drawn in favour of the Commissioner Service Tax, Delhi-I.
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> 2. In that view of the matter, it is directed that the said draft will be handed over to the Commissioner Service Tax, Delhi-I by its counsel under

acknowledgment, subject to final outcome of the adjudication proceedings. It is stated by learned counsel for the Respondent that although the DD is prepared by some other party and not by the Petitioner, it will be treated as an on account payment by the Petitioner subject to adjustment.

3. In view of the above payment the attachment of the Petitioner's bank accounts ordered by the Respondent by order dated 8th April 2016 is hereby directed to be lifted forthwith.

4. It is pointed out by learned counsel for the Petitioner that till date no Show Cause Notice (SCN) has been issued to the Petitioner. Learned counsel for the Respondent states that since the Petitioner admitted to the liability by letter dated 23rd January 2017, no purpose would be served in going through the exercise of issuing an SCN following by an adjudication. Learned counsel for the Petitioner joins issue and states that it is only for the purposes of persuading the Respondent to grant instalments to the Petitioner that the said statement was made. He insists on an a proper determination of liability in accordance with law.

5. In that view of the matter, it is directed that within six weeks from today, an SCN will be issued to the Petitioner. The Petitioner to file its reply thereto within the time granted and without either party seeking unnecessary adjournments and the adjudication proceedings should be concluded within a period of six months after the issuance of the SCN.

6. No further orders are called for in this petition. The petition and application are disposed of. Dasti."

3. Thereafter, the respondent had issued show cause notice dated

28th July, 2017, referring to the facts and circumstances and stating that it appeared service tax including secondary and higher education cess amounting to Rs.3,03,95,616/- was recoverable for the period 2012-13 (January-March) to 2015-16 under the provisions of sub-section (1) to Section 73 of the Finance Act, 1994 as amended. The petitioner was also asked to show cause as to why they should not be burdened with interest from an appropriate date till the date of payment and why penal action under Sections 76, 77 and 78 of the Finance Act should not be invoked. The petitioner was required to reply within 30 days as to why penalty under Section 78A of the Finance Act should not be imposed.

4. The petitioner accepts and admits that they have not filed reply to the show cause notice dated 28th July, 2017 till today.

5. The petitioner by the present writ petition seeks quashing of the said show notice and direction to the respondents to give abetment as per law and re-calculate the service tax liability.

6. We are surprised, why the petitioner instead of filing reply to the show cause notice has belatedly after 8 months challenged the show cause notice, which does not create a demand and requires a response/reply from the petitioner. The petitioner in the reply/response can raise all contentions and issues including the question of abetment and exemption. It is only after the adjudication order is passed that the demand would be raised. Further, the petitioner, if aggrieved by the adjudication order-in-original, would be entitled to challenge the same in accordance with law.

7. At this stage, counsel for the petitioner prays that time to file

reply to the show cause notice may be extended. Counsel for petitioner also states that they would pay costs of Rs.20,000/- to the respondent for the delay in filing reply to the show cause notice.

8. Subject to payment of costs of Rs.20,000/- and reply to the show cause being filed within four weeks, the same would be considered by the respondent while passing order-in-original.

9. With the aforesaid observations and directions, the writ petition is disposed of. We clarify that we have not commented on merits and on the issues arising from the show cause notice. The authorities would independently apply their mind to the averments made in the show cause notice and the reply to be filed.

Dasti.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 16, 2018
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