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

\+ W.P.(C) 7736/2017

VIKSUN CARRIERS PVT. LTD. ..... Petitioner

Through: Mr. Pradeep Jain, Mr. Shubhankar Jha and Ms. Neelam, Advocates.

versus

THE COMMISSIONER OF SERVICE TAX, DELHI-III COMMISSIONERATE ..... Respondent

Through: Mr. Harpreet Singh, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **08.01.2018**

The petitioner's grievance is that the liability imposed by virtue of the order of 21.06.2017 passed by the Commissioner of Service Tax cannot be sustained. The petitioner was engaged in the business of Customs House Agent Services and Business Auxiliary Services. According to the petitioner, this was sought to be brought to tax and, a show cause notice was issued on 23.10.2013, which was replied to within the time required. Petitioner further submits that a personal hearing was granted in respect of the show cause notice by the Commissioner on 20.7.2016 but no order made. It complains that the impugned order dated 21.6.2017 is highly belated and avers that the order was ante-dated, after coming into commencement of the Goods and Services Act.

Based upon the petitioner's allegations, the Court had required the respondent to not only file counter affidavit, but, also to produce the record to satisfy itself as to whether indeed the order was ante-dated. The original file relating to the assessment and adjudication has been produced that clearly reveals that the order was actually made on 21.06.2017; a copy of the dispatch register also supports the Revenue's contention in this regard.

This Court is of the opinion that the allegation with respect to ante-dated is not justified. At the same time, the petitioner's averments - as well as the material on record, disclose that according to the prevailing instructions, adjudicating authorities had to finalise their decision on show cause notice in such cases within 30 days. Clearly, in this case, that period was not honoured and instead the order was made almost eleven months after the hearing. In these circumstances, the Court is of the opinion that the impugned order of 21.6.2017 cannot be sustained. It is accordingly set aside. Respondent is directed to afford a fresh hearing to the petitioner and thereafter, pass an order on merits of the show cause notice at their earliest convenience, however, preferably within four months from today. Writ petition is allowed in the above terms.

Order *Dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 08, 2018

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