NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 94 of 2019

Veer Bhadra Singh, S/o Shri Vikrama Singh, aged about 50 years, Resident of Ramgarh, Post Ramgarh, Thana Balua, District Chadauli, Uttar Pradesh.

----Petitioner

Versus

1. Union of India, through the Secretary Revenue, Department of Revenue, North Block, New Delhi.
2. Commissioner of Central Excise and Service Tax, Central Excise Building, Tikrapara, Raipur, District Raipur, Chhattisgarh.
3. Commissioner, Chhattisgarh State Excise Department.
4. Assistant Commissioner, Chhattisgarh State Excise Department, District Bilaspur, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Neelabh Dubey, Advocate
For Respondent No. 1	:	Mr. B. Gopa Kumar, Assistant S.G.
For Respondents No. 2 to 4	:	Mr. Maneesh Sharma, Advocate
For State	:	Mr. Vikram Sharma, Deputy Government Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

Per, P.R. Ramachandra Menon, Chief Justice

27.06.2019

1. The challenge in the present writ petition is with regard to the sustainability of the show cause notice (Annexure P/1), with regard to the alleged non-satisfaction of the license fee coupled with various other aspects. Paragraph 15 of the said notice is to the following effect :-

> "Now, therefore the Noticee is required to Show Cause to the Assistant Commissioner, Central GST & Central

Excise, Division Bilaspur (C.G.) as to why :-

(i) The amount of Service Tax not paid to the tune of Rs. 38,09,732/- [including cess] during the period November 2016 to March 2017 should not be recovered from it under the provisions of Section 73 of the Finance Act, 1994.

(ii) Interest at appropriate rate should not be charged & recovered from it under Section 75 of the Finance Act, 1994.

(iii) The penalty for failure to make application and obtain registration should not be imposed upon them under Section 75 A of the said Finance Act.

(iv) Penalty should not be imposed upon them under the provisions of Section 76 of the Finance Act' 1994 for non-payment of service tax by contravening of Section 68 of the Finance Act, 1994.

(v) Penalty for non-filing of statutory ST-3 returns by inclusion of said taxable service as required under Section 70 of the Finance Act, 1994 as amended should not be imposed on the Noticee under Section 77 of the Act.

(vi) Penalty should not be imposed upon them under the provisions of Section 78 of the Service Tax Act 1994 for suppressing the taxable value with intent to evade payment of service Tax."

2. Heard Mr. Neelabh Dubey, learned counsel appearing for the petitioner at length. Various grounds have been raised in the writ petition with regard to the constitutional mandate, especially with regard to Article 366 29 (A) of the Constitution of India, apart from defining the term "service" under Section 65 B (44) of the Finance Act, 1994 (henceforth, "Act of 1994"), the liability to pay the service tax under the Act of 1994 and such other provisions. Reference is also made to the taxing power in relation to the various Entries,

particularly Entry 92C, coming in List I, Seventh Schedule, which is within the exclusive power and jurisdiction of the Central Government, in contrast to the taxing power of the State under Entry 8, Entry 51 and Entry 54 of List II.

3. Learned counsel for the petitioner vehemently argues that by virtue of law and in view of the binding decisions rendered by the Apex Court, the same transaction cannot involve a 'sale' as well as a 'service'. In the instant case, the petitioner is a dealer engaged in sale of English and countrymade liqour through the retail outlets in the group Uslapur and has been granted the license by the State to do the said exercise. Of course, license fee is to be paid to the State, which according to the petitioner, is fixed on the basis of the minimum quantum of liqour that has to be lifted, and this being the position, it is part of the revenue that is generated because of the sale and hence, this cannot be subject to service tax under any circumstance. It is in the said context, that the petitioner has made an endeavour to approach this Court to get the show-cause notice quashed, with reference to the pleadings on the grounds as aforesaid.

4. We heard Mr. Vikram Sharma, Deputy Government Advocate, learned counsel appearing for the State, Mr. B.Gopa Kumar, Assistant Solicitor General, learned counsel appearing for Union of India and Mr. Maneesh Sharma, counsel appearing for the Department of Excise. During the course of the submissions, as to the various queries raised by this Court with regard to the sustainability of the challenge of a notice, at this stage, learned counsel for the petitioner submits that the authorities concerned do not have any power at all, to issue the notice of this nature and hence, it is open for this Court to entertain the matter. According to

the respondents, the idea and understanding of the petitioner is thorougly wrong and misconceived and that the license fee has nothing to do with the tax that has to be paid by the petitioner in respect of the sales. It is also pointed out that, it is open for the petitioner to move the authorities concerned and put forth his version to the requisite extent, and the matter will be finalized by the competent authority accordingly.

5. We are aware of some judgments rendered by the Apex Court as to the circumstance under which interference is possible even in a case where notice has been issued to show cause with regard to the instance pointed out. There is no dispute with regard to the power of this Court in exercising jurisdiction under Article 226 of the Constitution of India, power is much wider than the power of the Apex Court under Article 32. But the question is whether the discretion should be exercised by this Court, at this juncture.

6. Main ground of the challenge is that the license fee is forming part of the revenue to be generated by the sale, and hence, it cannot be taxed. It may have to be considered whether it is so or does it occupy a different pedestal. This is more so since, even when a license is issued to a party, subject to satisfaction of the license fee, it may not be logically correct to say that there will always be a sale. In other words, although license is issued and the shop is established, there need not be any sale at all, for various reasons like, objection as to the location, raised by the nearby inhabitants or because of the quality of liquour that is being supplied, the price at which the commodity is sold and such other aspects, by virtue of which, no revenue may be generated, despite the license issued. In such circumstance, it may not be corrrect to say that license fee is part of the revenue generated by sale. However, we do not express

any opinion with regard to the said aspects. The issues and contentions may have to be considered by the competent authority at the first instance, and if any opinion is expressed by this Court in this writ petition, it may adversely affect the interest of the parties.

7. In the aforesaid context, we consciously decline interference and dismiss the writ petition without prejudice to the rights and liberty to the petitioner to raise all the contentions, both in facts as well as in law, before the Assistant Commissioner, Central Excise and Service Tax, Bilaspur, who has issued the show-cause notice to the petitioner. The proceedings shall be finalized by the said authority in accordance with law, as expeditiously as possible. Since, the time to submit the reply and the documents is already over, we find it appropriate to grant 15 days' time from the date of receipt of a copy of this judgment, to the petitioner, to comply with the requirements and to proceed with further steps. It is ordered accordingly.

8. The Writ Petition (Tax) stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet