IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8237 of 2013

H.Ferozkhan .. Petitioner

-vs-

1. Union of India represented by
the Secretary to Government
Ministry of Finance
New Delhi

2. The Commissioner
Central Excise and Service Tax
Vellore

3. The Commissioner
Ranipet Municipality
Ranipet .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records in pursuant to the proceedings of the third respondent vide Na.Ka.No.4491/2011/A3 dated 22.2.2013 in so far as demanding the petitioner to pay Rs.2,96,457/- as service tax as a condition for renewal of the contract of right to collect toll from the sellers of weekly shandy at Ranipet for the year 2013-2014 is concerned and quash the same.

For Petitioner :: Mr.T.P.Prabakaran

For Respondents :: Ms.R.Hemalatha
Central Government Standing
Counsel for R1 & 2
No appearance for R3

ORDER

H.Ferozkhan has filed this writ petition challenging the impugned order dated 22.2.2013 passed by the Commissioner, Ranipet Municipality, the third respondent herein calling upon the petitioner to pay a sum of Rs.1,44,612/- as service tax for the year 2012-13 and Rs.1,51,845/- as service tax for the year

2013-14, as a condition for renewal of the contract of right to collect toll from the sellers of weekly market at Ranipet for the year 2013-2014 is concerned within seven days and quash the same.

2. It is the claim of the petitioner that the petitioner's father was awarded with the contract of collecting toll from the shopkeepers who are putting up shops in the weekly market at Ranipet for the period from 1.4.2012 to 31.3.2013. When the contract was awarded to the petitioner's father on payment of Rs.11,70,000/- plus service tax at the rate of 12% amounting to Rs.1,44,612/- plus payment of 1% under Section 206(c) of the Income Tax Act amounting to Rs.11,700/-, the petitioner's father was asked to pay a sum of Rs.13,26,312/- for one year. At the time of contract, the petitioner's father paid a sum of Rs.3,90,000/- and the balance amount of Rs.9,36,312/- was to be paid in six equal installments at the rate of Rs.1,56,052/- per month from April, 2012 to September, 2012 on or before 5th of every month, failing which the same shall be collected with interest at the rate of Rs.1.50 per Rs.100/- per month. While his father was complying with the above conditions, all of a sudden, he died on 21.10.2012. Thereafter, the petitioner was carrying on the same with the consent of the Commissioner, Ranipet Municipality, the third respondent herein. As the petitioner's father left behind three legal heirs, the petitioner took over the duty of the other legal heirs. Since the contract period was to end on 31.3.2013, as per the notification issued in the Official Gazette on 4.4.58 under Rule 6(4) of the District Municipalities Act, 1920, the petitioner's father was entitled to have the contract for three years from 2012-13. Although the notification stated that the auction period was for three years, for the second and third years, the lessee should pay additionally 5% increase to the previous year's contract amount. Besides, the notification also stated that if the lessee died within the contract period of three years, the legal heirs of the lessee would be issued licence, if they so wished. Therefore, it is claimed that the petitioner is entitled to have the renewal of the said contract as the legal heir of his deceased father. While so, the third respondent issued a proceeding dated 22.2.2013 bearing Na.Ka.No.4491/2011/A3 requesting the petitioner's father to pay the service tax of Rs.1,44,612/- for the year 2012-13 and also the service tax of Rs.1,51,845/- for the year 2013-14 so as to renew the contract of collecting toll in the weekly market at Ranipet within seven days. As the third respondent is not entitled to demand service tax from the shopkeepers, this writ petition has been filed.

3. But this Court is unable to find any merit in the writ petition for the following two reasons. When the petitioner's

father was awarded with the contract of collecting toll from the shopkeepers who are putting up their shops in the weekly market at Ranipet for the period from 1.4.2012 to 31.3.2013, even the proceedings dated 30.3.2012 would show that the contract was given to the petitioner's father only by the third respondent. Therefore, it is not open to the petitioner to say that the third respondent is not entitled to demand the service tax. Moreover, the period of contract is already over. Therefore, the writ petition fails and it is dismissed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To
1. The Secretary to Government of India
Ministry of Finance
New Delhi

2. The Commissioner
Central Excise and Service Tax
Vellore

3. The Commissioner
Ranipet Municipality
Ranipet

+1 CC to Mrs.R. Hemalatha, SSC for Customs, sr 95785
+1 CC to Mr.T.P.Prabakaran, Advocate sr 95394

W.P.No.8237 of 2013

CA(CO)
SP(17/12/2019)