IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.19120 of 2019
and
W.M.P.No.18482 of 2019

Innovative Security Solutions,
[Represented by its Proprietor
D.Pradeep Kumar],
Shristi, No.3-C HMH Plaza,
S-6 G.N.Chetty Street,
T.Nagar, Chennai - 600 017. ..Petitioner

vs

The Commissioner of GST and Central Excise,
Chennai Outer,
Newry Tower, Plot No.2054, 1st Block,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai - 600 040. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records relating to the order passed by the first respondent in impugned order in Original No.24/2018 [R] dated 26.07.2018 in file C.No.IV/09/130/2018 - STII [Adj] received on 29.08.2018 and quash the same.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.M.Santhanaraman
Senior Standing Counsel for
Central Excise

O R D E R

Mr.T.R.Ramesh, learned counsel on record for writ petitioner and Mr.M.Santhanaraman, learned Senior Standing Counsel for Central Excise on behalf of lone respondent, are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up and is being disposed of.

3. Subject matter of main writ petition is Service Tax. Before this Court proceeds further, it is deemed appropriate to extract and reproduce earlier proceedings of this Court dated 07.08.2019, which reads as follows:

> "An order made by the sole respondent, which this Court is informed is under Section 73 of Finance Act, 1994, pertaining to service tax, has been called in question. The order is dated 26.07.2018 and it bears Reference No.C.No.iV/09/130/2015-STII (ADJ) (hereinafter 'impugned order' for brevity).
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> 2. Learned counsel for writ petitioner submits that impugned order was served on the writ petitioner on 29.08.2018.
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> 3. To be noted opportunity to show cause alone is statutorily imperative, but in the instant case, respondent in his wisdom and at his discretion has chosen to give a personal hearing to the writ petitioner and that personal hearing was undisputedly held on 15.11.2016, prior to the 'Goods and Service Tax' ('GST' for brevity) regime, which started operating on and from 01.07.2017.
>
> 4. Personal hearing was held by the Commissioner of Service Tax-II. It comes to light from the impugned order, more particularly, paragraphs 3.1 and 4.2 that after the GST regime came into force on 01.07.2017, the instant matter was assigned to the respondent viz., Commissioner of GST and Central Excise, Chennai -Outer by the principal Chief Commissioner of GST and Central Excise.
>
> 5. Paragraphs 3.1 and 4.2 of the impugned order read as follows:
>
> '3.1. Personal hearing was held on 15.11.2016. Shri K.Girithar, Manager-Ops and Ms.A.Gomathi, Manager-Admin of the assessee, appeared for the personal hearing and submitted a written reply dated 15.11.2016.
>
> 4.2. Personal hearing pertaining to this case was conducted and concluded by me in my capacity as Commissioner of Service Tax II, Chennai. However, order-in-original could not be passed by me in that capacity on account of reorganization of field formations on 22.06.2017 pursuant to implementation of GST. In view of this, Principal Chief Commissioner of GST and Central Excise Chennai vide his order C.No.IV/16/376/2017-CCO (GST-3) dated 29.09.2017 in terms of the powers conferred by Section 37A of the Central Excise Act, 1944 as made applicable to Service Tax by Section 83 of the Finance Act, 1994 read with Notification No.06/2009-ST dated 30.01.2009 has reassigned this show cause notice to the undersigned

to conclude the adjudication proceedings. I, accordingly, proceed with the adjudication.'

6. In the instant case, it so happens that the same incumbent i.e., G.Ravindranath, Commissioner of Service Tax-II, Chennai, who held the personal hearing on 15.11.2016, became the Commissioner of GST and Central Excise post GST regime and therefore, he passed the impugned order based on the assignment of work made by the Principal Chief Commissioner of GST and Central Excise and the personal hearing held on 15.11.2016.

7. Between the date of personal hearing (15.11.2016) and the date of impugned order (26.07.2018), more than $1^{1/2}$ years, 20 months to be precise, have elapsed.

8. Mr.M.Santhanaraman, learned Standing Counsel for Customs and Indirect Taxes accepts notice on behalf of sole respondent, seeks time to get instructions and revert.

9. List this matter on 13.08.2019 in the 'Motion List'."

4. The aforesaid proceedings dated 07.08.2019 captures the lis in a nutshell. Pursuant to aforesaid proceedings, instant writ petition, is listed today.

5. As already alluded to supra, with consent of learned counsel on both sides, main writ petition is taken up and is being disposed of.

6. Pursuant to the aforesaid proceedings, learned Revenue Counsel, on instructions, submits that the factual matrix as captured in the impugned order is not under disputation.

7. Be that as it may, learned counsel for writ petitioner has filed a typed set of papers wherein notifications made vide gazette publications being publications made by the Government of India dated 11.04.1992 and 08.05.1993 have been placed before this Court as part of the case file. On perusal of the same, it comes to light that the writ petitioner who is a Colonel, has put in three decades of service in the armed forces from 1997 to 2007. Writ petitioner has also been awarded by the President of India, the Gallantry Award Sena Medal for Bravery in the face of Enemy in Anti-Terrorist Operations on 26.01.1991 and the Gallantry Award of ''SHAURYA CHAKRA'' for Exceptional Bravery in the face of Enemy in Anti-Terrorist Operations on 26.01.1992.

8. As already alluded to in the proceedings of this Court dated 07.08.2019, which has been extracted and reproduced supra, this Court is informed that impugned order has been made inter alia under Section 73 of Finance Act. To be precise, this Court is informed that impugned order has been made in terms of powers

conferred by Section 37 A of the Central Excise Act, 1994 as made applicable to Service Tax by Section 83 of Finance Act, 1994 in the light of Notification No.06/2009-ST dated 30.01.2009.

9. As already alluded to supra, the respondent in his wisdom and discretionary power has chosen to offer an opportunity of personal hearing to the writ petitioner in the instant matter. For the purpose of specificity, it is clarified that in matters of this nature, where orders are passed under aforesaid provisions pertaining to service tax, it is not statutorily imperative to hold a personal hearing, but it will suffice if a reasonable opportunity to show cause is given. However, this does not impede or fetter the rights of the respondent, if the respondent choses to give a personal hearing in his discretion, considering the nature and circumstances surrounding the matter. In the instant matter, the respondent has chosen to give a personal hearing in the factual setting before him. Therefore it is made clear that this order cannot be cited as a precedent to say that personal hearing is imperative in all matters of this nature.

10. With the aforesaid clarificatory observation, this Court now proceeds to deal with the impugned order.

11. As it would be evident from the proceedings dated 07.08.2019, personal hearing was held on 15.06.2016 and the impugned order has been passed on 07.08.2018 (more than 20 months i.e., more than 1 & ½ years later). In this regard, circular No.1053/2/2017-CX., dated 10.03.2017 issued by the 'Central Board of Excise and Customs, New Delhi' ['CBEC' for brevity] forming part of Ministry of Finance (Government of India) is of relevance. There is no disputation or disagreement before this Court that this circular is operating. Most relevant portions of the circular are Paragraph Nos.14.10 and 16, which are extracted and reproduced infra:

> "14.10. Issue and Communication of order: In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible as but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required to be communicated to the assessee in terms of provisions of Section 37C if the CEA, 1994.
>
> 16. Transfer of adjudicating authority: Adjudicating officers are expected to issue order-in-original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. The successor in office should offer a fresh hearing to the notice before deciding the case and issuing adjudication

order/formal order."

12. In the light of the narrative thus far, this Court is of the considered view that this is a fit case to remit the matter back to the respondent for redoing after affording an opportunity of personal hearing afresh to the writ petitioner the order assessing service tax after.

13. Owing to all that have been set out, the following order is passed:

(a) Impugned order being order dated 26.07.2018 bearing reference in Original No.24/2018 (R), made by the sole respondent is set aside. It is made clear that the impugned order is set aside solely on the ground of delay between the dates of personal hearing and the date of the order. In other words, no opinion or view is expressed on the merits of the matter.

(b) Respondent shall offer personal hearing to the writ petitioner after giving adequate advance notice to the writ petitioner.

(c) After the personal hearing, the respondent shall take into account the objections and materials placed before the respondent in the personal hearing and pass orders afresh.

(d) The aforesaid exercise shall be completed as expeditiously as possible and in any event within a period of eight weeks from the date of receipt of a copy of this order.

14. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Pns

To

The Commissioner of GST and Central Excise,
Chennai Outer,
Newry Tower, Plot No.2054, 1st Block,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai - 600 040.

+1cc to Mr.J.Shankarraman, Advocate, SR.69042
+1cc to Mr.M.Santhanaraman, Advocate, SR.69176

W.P.No.19120 of 2019
and
W.M.P.No.18482 of 2019

(CO)
CB(04/10/2019)