BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.7678 of 2013
and
M.P.(MD)No.1 and 2 of 2013

M/s Daniel and Samuel Logistics Private Limited,
Represented by its Managing Director,
T.Selvakumar,
No.107/93D/23A, Rajagopal Nagar,
Millerpuram,
Tuticorin-628 008. ... Petitioner

Vs.

1.The Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Building,
Tractor Road, NGO A Colony,
Tirunelveli-627 007.

2.The Superintendent of Central Excise,
Service Tax Range, C-50 Sipcot Range,
Tuticorin 628 008.

3.The Superintendent of Central Excise,
Divisional Preventive Unit,
Tuticorin-628 008.

4.The Superintendent of Excise (SIV Unit),
Central Revenue Building,
Tractor Road, NGO (A) Colony,
Tirunelveli-627 007.

5.The District Collector,
Thoothukudi District,
Thoothukudi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari, to call for the records relating to the orders of the fifth respondent dated 05.02.2013 in ROC.J1/688/2013 and quash the same.

For Petitioners	:	Ms.J.Merlyn for Mr.N.Dilip Kumar
For R5	:	Mrs.J.Padmavathy Devi Special Government Pleader
For R1 to R4	:	Mr.B.Vijay Karthikeyan

ORDER

The petitioner is an assessee to service tax. Returns of service tax have admittedly been filed returning amounts for the following periods as below to tax:-

1.April to September, 2009-10	*- Rs.18,49,018/-*
2.October to March, 2009-10	*- Rs. 4,80,732/-*
3.April to September, 2010-11	*- Rs. 9,41,113/-*
4.October to March, 2010-11	*- Rs.17,21,541/-*
5.April to September, 2011-12	*- Rs. 3,91,600/-*
6.April to June, 2012-13	*- Rs. 9,255/-*
Total	*- Rs.53,93,359/-*

2. However, the admitted liability of a sum of Rs.53,93,359/- has not been remitted. Thus action has been initiated by the respondents to collect the aforesaid admitted dues. Vide communication dated 06.12.2012, the second respondent has called upon the petitioner to remit the admitted service tax along with appropriate interest, penalty and late fee under the threat of coercive action. Since there was no compliance with the notice measures were initiated in terms of the Revenue Recovery Act.

3. The petitioner, in this writ petition, challenges communication dated 05.02.2013 issued by the Collector to the Superintendent / second respondent, to the following effect.

> *"Sub: Revenue Recovery Act- Recovery of Service Tax amount of Rs.53,84,104/- along with interest @ 18% per annum- recovered from above said amount Thiru.T.Selvakumar and Two persons- Regarding.*
>
> *Ref: Certificate No.01/2013 issued u/s.11 of Central Excise Act, 1944 by the Superintendent of Central Excise, Service Tax Range, C-50, SIPCOT Complex, Tuticorin-8 in O.C.No.1897/2013, dated 02.01.2013.*
>
> *With reference to your certificate issued by you u/s.11 of Central Excise Act, 1944, you are hereby requested to send the statement of accounts of the service tax amount of Rs.53,84,104/- due from M/s.Daniel and Samuel Logistics Pvt.Ltd., Door No.21, Tooveypuram, 3rd Street, Thoothukudi-628 003 and let me know the rules for imposing 18% of interest per annum on the service tax due from the defaulters, so as to initiate necessary action against the defaulters under Revenue Recovery Act."*

3. There is no dispute on the fact that the amount of Rs. 53,93,359/- is admitted as service tax as per the returns filed by the petitioner. The only quarrel raised is that the impugned communication refers to Certificate No.1 of 2013 issued under Section 11 of the Central Excise Act, 1944 (in short 'Act'), which

is inapplicable in the present case, since the provision does not stand incorporated into the provisions of Finance Act, 1994, in terms of which service tax is levied.

4. My attention is drawn to the provisions of Section 83 of the Finance Act, which lists out the specific provisions of the Central Excise Act that would apply to levy of service tax. Section 11 does not figure therein. However there is, in my view no necessity to touch upon the Central Excise Act at all in the light of the provisions of Sub Clause 87 (D) of the Act as follows:-

> *"Section 87: Recovery of any amount due to Central Government:-*
>
> *(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such persons and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue."*

5. Thus the provisions of the Finance Act, 1994 are adequate to support the action taken in the present case for recovery. No doubt, the Certificate referred to in the impugned communication states at the top 'Section 11 Certificate No.1/2012'. However, I am of the view that mere reference to Section 11 (without even reference to the statute) would not vitiate the Certificate itself. Clearly, the provisions of Section 87 (D) provide for the drawing-up of a certificate for tax arrears and that is what has been done in the present case. The objections raised by the petitioner are seem to hyper-technical and rejected as such. This Writ Petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Central Excise,
Customs and Service Tax,
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5.The District Collector,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-79388[F] dated 02/08/2019)
+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-79427[F] dated 02/08/2019)

W.P(MD)No.7678 of 2013
01.08.2019

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JM/17.09.2019/4P/8C