HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

Writ Petition No.2007 of 2019

ORDER: *(per V. Ramasubramanian, J)*

Challenging an Order in original passed by the Commissioner of Service Tax, imposing a liability under Section 73(2) and other provisions, the petitioner has come up with the above Writ Petition.

2. Heard Mr.G.Mohan Rao, learned Counsel for the petitioner, and Sri B.Narasimha Sarma, learned Senior Standing Counsel for the respondents.

3. The order impugned in the Writ Petition is capable of being challenged in a departmental appeal. However, the petitioner seeks to bypass the alternative remedy on the ground that the impugned Order was passed in violation of the principles of natural Justice.

4. The short ground on which the impugned Order is challenged is that the assessee in this case which got amalgamated with the petitioner herein in the year 2017 under the Orders of the National Company Law Tribunal, were not served with the show cause notice nor with any notices of personal hearing. In the light of such a contention raised by the petitioner, we directed the learned Senior Standing Counsel to file necessary documents to show whether notices were served or not.

5. The respondents have filed a counter affidavit enclosing copies of the show cause notice, the Panchanama for service of

show cause notice and the letters of intimation for personal hearing along with the returned postal covers. All these documents show that the respondents made genuine attempts to serve the show cause notices on the assessee by name Opportunity Media Private Limited, but the efforts were futile. It appears even from the panchanama filed by the respondents that the assessee had vacated the address from which they were functioning, as per the records of the respondents.

6. Therefore, in essence, the contention of the respondents is that they have complied with the statutory requirements prescribed under Section 37(C) of the Central Excise Act, 1944, which is made applicable to Service Tax under Section 83 of the Finance Act, 1994. Hence, it is contended by the respondents that there was no violation of the principles of natural Justice.

7. If the original assessee viz., the Opportunity Media private Limited had come up before us, we would have rejected the contention regarding violation of principles of natural Justice on two (2) grounds viz., (a) that they had failed to intimate the change of address, as required by Rule 4 (5A) of the Service Tax Rules, 1994, and (b) that whatever is required to be done under Section 37(C) had been done by the respondents.

8. But the petitioner herein is a Company with which the assessee got amalgamated in the year 2017 and the factum of amalgamation was made known to the respondents only on 03.04.2017. Therefore, the lack of knowledge on the part of the petitioner, which appears to be genuine, would require one more opportunity to be given to them. The lack of knowledge on the part

of the petitioner about the proceedings, is *bona fide* in this case, since the petitioner could not have checked up before the Orders of amalgamation, whether the procedural requirements under Rule 4 (5A) of the Service Tax, 1994, had been complied with or not.

9. In view of the above, the Writ Petition is allowed, the impugned Order is set aside. The petitioner shall file their response to the show cause notice, on or before 08.04.2019. Thereafter, the respondents shall fix a date of personal hearing and then pass Orders in accordance with law. While filing their response to the show cause notice on or before 08.04.2019, the petitioner shall clearly intimate the address for service for future correspondence.

Consequently, miscellaneous petitions if ay pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 18, 2019
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