HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.4856 OF 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Aggrieved by an order rejecting an application for rectification under Section 74 of the Finance Act, 1994 (for short 'Finance Act'), the service provider has come up with the above writ petition.

2. Heard Mr. B. Srinivas Rao, learned counsel for the petitioner, and Mr. B. Narasimha Sarma, learned senior standing counsel for the respondents.

3. The petitioner suffered an order in original dated 10.01.2019, demanding service tax under the proviso to Section 73(1) of the Finance Act. Contending that Rule 2A of the Service Tax (Determination of Value) Rules, 2006, was not even taken note of while arriving at the quantum of tax, the petitioner moved an application for rectification under Section 74 of the Finance Act. But, it was rejected by the order impugned in writ petition dated 28.02.2019, on the ground that there was no mistake apparent from the record. It is against the said order that the petitioner is before us.

4. The question as to whether the non-application of the relevant provision of the rules would tantamount to a mistake apparent on the face of the record, is subject to certain parameters. It is not in

all cases that the application of a wrong provision or the non-application of a right provision would tantamount to a mistake apparent from the record. May be the petitioner has a good case on merits. But, an order of rejecting of an application for rectification cannot *per se* be taken to be wrong in the light of the limited scope of Section 74 of the Finance Act. Therefore, the petitioner should only file an appeal against the original order dated 10.01.2019.

5. Under Section 85(3A) of the Finance Act, the petitioner has a remedy of appeal within two (2) months. In this case, the period of two (2) months can be calculated only from the date of receipt of the order of rejection of the rectification of application. The date of order of rejection of the rectification application is 28.02.2019. It was received by the petitioner on 04.03.2019. Therefore, the petitioner has time up to 04.05.2019 for filing an appeal against the order in original dated 10.01.2019.

6. In view of the above, giving liberty to the petitioner to file a regular appeal against the order in original and directing the respondents to treat the appeal as within the period of limitation, if filed on or before 04.05.2019, the Writ Petition is dismissed. The appellate authority shall consider the objections with regard to applicability of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 and all other contentions now raised. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 18, 2019.

<u>NOTE</u>:

Issue C.C. by today. (BO) PV