

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 23.09.2020

PRONOUNCED ON : 29.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14825 of 2016
and
WMP.Nos.12961 & 12962 of 2016

R.Ramadas

... Petitioner

Vs.

1. The Joint Commissioner of Central Excise,
No.1, Goubert Avenue (Beach Road),
Puducherry.

2. The General Manager (Finance/Tax),
Neyveli Lignite Corporation Ltd.,
Neyveli-1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned Order-in-Original No.07/2016-ST dated 25.02.2016 passed by the first respondent and to quash the same as illegal, without authority of law and goes beyond the scope of the show cause notice.

For Petitioner : Mr.M.A.Mudimannan

For Respondent-1:Mr.V.Sundareswaran, SC

For Respondent-2:Ms.R.Charulatha

for M/s.Lakshmi Kumaran

O R D E R

With the consent of both parties, the present Writ Petition is heard through Video Conferencing on 23.09.2020.

2. The petitioner herein, who is a contractor for carrying out certain contracts for the Neyveli Lignite Corporation Ltd., (NLC) and registered as a service provider for Management, Maintenance and Repair services; Manpower Supply Service; Civil and Industrial Construction Service; and Works Contract Service, filed his returns under the Service Tax Law for the period 2009-2010 to 2012-2013.

3. By a show cause notice dated 13.10.2014, the Department proposed to demand service tax on a) Manpower Recruitment or Supply Agency; b) Management, Maintenance or Repair services; c) Works Contract and Commercial or Industrial Construction. The petitioner had given a reply dated 14.11.2014 stating that the proposed demand does not indicate the exact amount under each type of services and there is no mention under which category the service tax has been demanded. The first respondent herein, had passed the impugned order dated 25.02.2016, stating that the petitioner is liable to pay service tax for a) Site formation and clearance, excavation, earth moving and demolition services b) Works contract service and c) Maintenance and Repair service for the work done by the petitioner for the road works from Melpathy to Virudhachalam Cuddalore Main Road. The said order is put under challenge in the present Writ Petition.

4. The main grounds raised by the petitioner is that the demand of service tax on the grounds relied upon in the impugned order is not in conformity with the proposals made in the show cause notice and that the notice is vague and without any details.

5. The learned counsel for the first respondent on the other hand, placed reliance on the averments in the counter affidavit dated 25.07.2020 and stated that the impugned order has confirmed service tax on Site formation and clearance, excavation, earth moving and demolition services to the tune of Rs.15,35,830/- as against the proposed service tax of Rs.45,73,670/-, after taking all the submissions of the petitioner into consideration.

6. I have given careful consideration to the submissions made by the respective counsels.

7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals.

8. A Hon'ble Division Bench of this Court in the case of M/s.Thirumurugan Enterprises, Neyveli V. CESTAT and another in CMA Nos.764 to 768 of 2015, had set aside the orders of the Tribunal on the ground that the proposal of taxable service in the show cause notice was vague and bereft of details. The relevant portions of the order reads as follows:-

"13. However, a careful perusal of the

orders of the adjudicating authority, the Commissioner (Appeals) as also the Tribunal would reveal that the Commissioner (Appeals) has decided the issues on two aspects, viz., one on the vagueness of the show cause notices stating that it is bereft of details and being without clarity and the other on the plea of limitation. The Tribunal, however, in its order, while extracting the portion of the order of the Commissioner (Appeals) was of the view that the Revenue had discharged its burden by producing the statements given by NLC and that the assesseees did not dispute it at any point of time and that the entire demand was raised on the basis of the statements provided by NLC. However, this finding of the Tribunal runs counter to the plea raised by the 16 appellants/assesseees before the Commissioner (Appeals) as the show cause notices were challenged on the very foundation that they are vague and without particulars as to classification of works that attracts service tax.

14. Further, the Tribunal, while glossing over the various decisions of the Tribunal and the Supreme Court, has come to an erroneous conclusion that the only grievance of the assesseees is that the Revenue did not give break-up of the amounts with reference to each service rendered by them. This finding of the Tribunal appears to be a fallacy on fact. As extracted by us in the earlier portion of the order, the various contentions raised by the present appellants before the Commissioner (Appeals) shows that that issue as raised is not pure and simple break-up of amounts, which should have been shown in the show cause notice, but the show cause notices itself being vague and bereft of details as to the nature of taxable services rendered by the appellants/assesseees to NLC."

9. In the light of these legal propositions, the show cause notice dated 13.10.2014 and the consequential impugned order dated 25.02.2016 were perused. The show cause notice issued to the petitioner, is a proposal to demand service tax on manpower recruitment or supply agency; management, maintenance or repair services; works contract; and commercial or industrial construction. To such a show cause notice, the petitioner gave his objections on 14.11.2014, stating that all the proposals are vague and bereft of any particulars, since the show cause notice

does not indicate the exact amount of service demanded under the respective services and accordingly sought for details. However, in the impugned order dated 25.02.2016, the demand for service taxes were made for a) site formation and clearance, excavation, earth moving and demolition services; b) works contract service; c) maintenance and repair service for the road works done from Melpathy to Virudhachalam Cuddalore Main Road.

10. Apparently, the demand of service under the aforesaid heads were not specifically proposed in the show cause notice dated 13.10.2014. Furthermore, the petitioner had expressed his inability to raise his objections to the show cause notice since the notice did not indicate the respective services under which the proposal for demand of service tax was made. However, without adhering to his objections, the impugned adjudication order has been passed.

11. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given, for that particular demand for which a proposal has not been made.

12. Thus, as rightly pointed out by the learned counsel for the petitioner, the impugned adjudication order cannot be sustained, since it traverses beyond the scope of the show cause notice and is also vague and without any details. Accordingly, such an adjudication order without a proposal and made in pursuant of a vague show cause notice cannot be sustained.

13. For the reasons stated above, the Order-in-Original No.07/2016-ST dated 25.02.2016 is quashed. However, the first respondent is granted liberty to issue a fresh show cause notice giving details of the proposed demand for the respective services, atleast within a period of 30 days from the date of receipt of a copy of this order. With such a liberty, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP
To

1.The Joint Commissioner of Central Excise,
No.1, Goubert Avenue (Beach Road),
Puducherry.

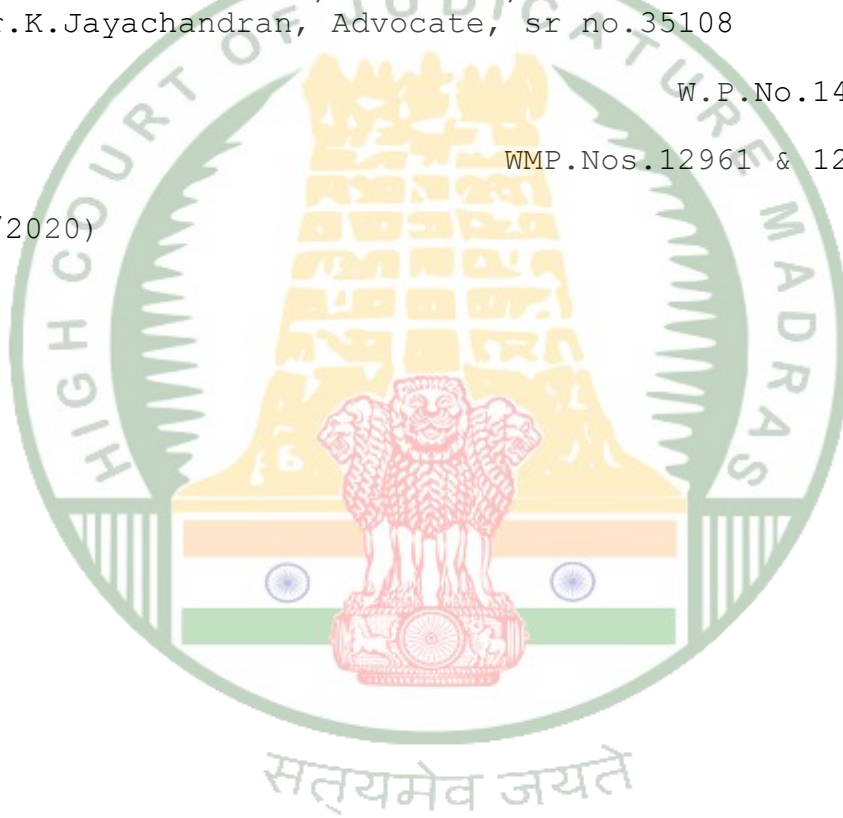
2.The General Manager (Finance/Tax),
Neyveli Lignite Corporation Ltd.,
Neyveli-1.

+1cc to Mr.V.Sundareshwaran, Advocate, sr no.35010
+1cc to Mr.Lakshmi kumaran, Advocate, sr no.35011
+1cc to Mr.K.Jayachandran, Advocate, sr no.35108

W.P.No.14825 of 2016
and

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BR(CO)
RMP(03/12/2020)



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