HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 13 of 2021

- Ramesh Kumar Shrivastava, S/o Late D.P. Shrivastava, Aged About 64 Years R/o 26 / 1, Radhika Nagar, Supela, Bhilai, District - Durg Chhattisgarh.

---- Petitioner

Versus

1. Union Of India, Through Secretary, Department Of Revenue, Ministry Of Finance, Nehru Place, New Delhi, Delhi 110019
2. Commissioner, Central Excise, Customs And Service Tax, Central Excise Building Tikra Para, Dhamtari Road Raipur Chhattisgarh
3. Assistant Commissioner, CGST And Central Excise, Division - I, Bhilai, C.G.S.T. Bhawan, Near 32 Bunglow, HUDCO, Bhiali, District - Durg Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Malay Shrivastava, Advocate
For Respondent	:	Shri Ramakant Mishra, ASG

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10.02.2021

Heard.

1. Learned counsel for the petitioner would submit that the petitioner have been served with a notice dated 19.12.2020 (Annexure P-1) whereby the service tax of Rs. 49,49,344/- has been sought to be recovered from the petitioner. He would further submit that though the Annexure P-1 says that it is a show cause notice but the same has been issued with premeditated mind that too for the financial year 2015-16 & 2016-17. He further submit that as per Section 73 of the Finance Act, 1994 the recovery of like nature cannot be made beyond the period of 18 months, unless the fraud/collusion willful misstatement or suppression of fact or contravention of any provisions of the

chapter is made, thereunder with the intent to avoid payment of service tax is established. He further relies on the case of Siemns Ltd Vs. State of Maharasthra and others reported in (2006) 12 SCC 33 and would submit that when the show cause notice has been served with premeditated mind then the Court can interfere, therefore the said notice would be hit by Section 73 of the Act of 1994 beside the law laid down by the Supreme Court.

2. Per contra, learned counsel for the respondent would submit it is for this reason alone that the petitioner has been served with the notice, show cause to explain under what circumstances he has received an amount of commission for rendering the service. He would submit that in order to find out the cause the show cause notice has been served and in the earlier occasion also the show cause notice was served by Annexure P-2 but the petitioner do not thought it proper to even respond to it. Consequently, again the notice has been served. He refers to Section 65 (B) (44) of the Act of 1994.

3. Perused the notice dated 19.12.2020 (Annexure P-1) which is under challenge. The notice purports that as per the information reveals the Noticee i.e. the petitioner has received certain amount for financial year 2015-16 and 2016-17 towards provision of services made by them to their service receivers but failed to pay the Service Tax. Thereafter, the notice also purports that the Noticee did not provide any information or document about the service provided by them, therefore, it appears that the service provided by the Noticee are not covered under the negative list mentioned under the Section 66 (1) or the other entries of mega exemption which are notified. Therefore, the presumption was drawn that the Noticee will be chargeable under the service tax in terms of Section 66 (D). The notice further purports that it appears that Noticee has not disclosed the fact of receiving the amount of providing such taxable service to the department and has suppressed the same with intention to avert payment of service tax. Section 73 of the Act of

1994 on which the petitioner placed reliance would show where the service tax has not been levied or paid for the reason for suppression of facts or contravention of provision of the chapter then the recovery could be made beyond the period of 18 months. The notice served to the petitioner categorically speaks about there being suppression of facts by the Noticee/ petitioner, therefore he has been asked to explain before the authority why the tax may not be levied to the extent which is reflected in the notice. Therefore, the petitioner can very well appear before the Assessing authority to reply the notice. At this stage, after perusal of the notice, in the opinion of this Court the Statutory Authority has not issued the notice with premeditated mind and show cause notice is served to explain. The issue revolves around about the suppression of fact which the petitioner requires to explain before the authority to get exemption in view of Section 73 as has been stated.

4. In view of this, the petition sans merit is liable to be and is hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti