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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 113 of 2021

{Arising out of order dated 10.02.2021 passed by the learned Single Judge in Writ Petition (T) 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 (C.G.)

---- Appellant

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, Bhilai, District Durg (C.G.)

---- Respondents

For Appellant	:	Shri Malay Shrivastava, Advocate.
For Respondents	:	Shri Ramakant Mishra, Assistant Solicitor General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

06.04.2021

1. Challenge in this appeal is to the order dated 10.02.2021 passed in Writ Petition (T) No. 13 of 2021, whereby the learned Single Judge dismissed the writ petition filed by the Appellant challenging the show cause notice issued by the 3rd Respondent.

2. Shri Malay Shrivastava, learned counsel appearing for the Appellant submits that the 3rd Respondent issued a notice on 19.12.2020, stating

therein that Appellant has not disclosed the facts of receiving amount from providing taxable service to evade service tax for the financial year 2015-16 & 2016-17. He submits that the notice is vague as to against which taxable service the Appellant has received the amount is not clearly mentioned. He further pointed out that the maximum period for recovery under Section 73 of the Finances Act, 1994 (for short, 'Act of 1994') is 18 months, whereas the notice has been issued much after expiry of the period provided under the Act of 1994 for recovery of the service tax. Lastly, he submits that the notice issued is predetermined, the authorities have fixed the amount of service tax hence no purpose will be served in submitting reply to the notice before the department. He submits that the learned Single Judge has not taken into consideration all the points raised by the Appellant and hence the impugned order to be interdicted.

3. Shri Ramakant Mishra, learned Assistant Solicitor General appearing for the Respondents submits that under the provision of Section 73 of the Act of 1994, it is specifically mentioned in proviso that for the reason mentioned therein the period for the recovery is of 5 years. He further submits that the Appellant can very well approach the authorities by filing of the reply raising all the grounds which is argued before this Court and the authorities will consider the same. He submits that the notice Annexure P/1 is only a show cause notice which is apparent from the wordings used therein. If he find the notice to be vague he can seek clarification from the department itself. Lastly, he submit that by going through paragraph 16 itself is clear that the Appellant is asked to show the cause as to why the Rs. 49,49,344/- could not be demanded from the Appellant under the provisions of the Act of 1994.

4. We heard the learned counsel for the parties.

5. Going through the provision under the Act of 1994 and the contents of the notice, we find that the notice is a show cause notice served upon the Appellant under Section 73(1) of the Act of 1994 to explain as to why service tax specified therein should not be charged from the Appellant. So far as the ground raised by the learned counsel for the Appellant that the notice is vague as to which of services are taxable service upon which the Appellant collected the amount is not mentioned therein. The Appellant may file appropriate application before the department itself seeking clarification and he will be at liberty to submit the reply to the show cause notice raising all the grounds available to him.

6. Court should not interfere at the stage of show cause notice except where there is jurisdictional error or there is apparent absence of process of law. No such exceptional ground is made out as discussed in above paras. It is for the authority to consider the reply submitted by the Appellant and decide the same at the earliest by speaking order in accordance with law. We do not find any infirmity in the order passed by learned Single Judge.

7. For the forgoing reason, we do not find any merit in this appeal and the appeal is liable to be dismissed and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan