IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.387 OF 2021

Amrish Rameshchandra Shah … Petitioner
Vs.
Union of India and others … Respondents

Mr. Prakash Shah a/w. Mr. Prasad Paranjpe i/b. PDS Legal for Petitioner.
Mr. J. B. Mishra for Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : MARCH 8, 2021

P.C. :

Heard Mr. Shah, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondents.

2. On 27.01.2021, we had passed the following order which sums up the controversy in question:-

> "2. Challenge made in this Writ Petition is to the show cause-cum-demand notice issued by respondent No.3 on 30.12.2020 to the petitioner.
>
> 3. On a query by the Court as to why petitioner has not filed reply to the show-cause notice and instead has invoked writ jurisdiction of this Court, learned counsel for the petitioner submits that the impugned show cause-cum-demand notice has been issued without jurisdiction. His contention is that petitioner is a Chartered Accountant by profession and is a partner in a firm. The firm had filed income tax return and has paid service tax. Based on the declaration made in the income tax return, a view has been taken by respondent No.3 that the remuneration received by the petitioner from the firm is subject to service tax and since this has not been paid, impugned show cause-cum-demand notice has been issued.
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> 4. Learned counsel for the petitioner has referred to a decision of the Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in ***Alpa Management Consultants P. Ltd. Vs. Commissioner of Service Tax, 2007(6) S.T.R. 181***, where CESTAT has held that service tax cannot be recovered based on the returns shown in the income tax returns. He further submits that appeal filed by the service tax

> department before the Karnataka High Court was dismissed on the ground of maintainability whereafter service tax department approached the Supreme Court. Supreme Court dismissed the civil appeal filed by the Commissioner of Service Tax.
>
> 5. Issue notice.
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> 6. Mr. J. B. Mishra, learned counsel waives notice for all the respondents.
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> 7. Let the respondents file their reply affidavit by the next date.
>
> 8. In the meanwhile, there shall be stay of the impugned show cause-cum-demand notice dated 30.12.2020."

3. Today, Mr. Mishra, learned counsel for the respondents has tendered reply affidavit on behalf of the respondents in Court, which we have accepted.

4. Let the reply affidavit be kept as part of the record.

5. On going through the reply affidavit, we find that the impugned show cause notice was issued on the basis of information retrieved from the Income Tax Department. However, upon verification respondents have now come to the conclusion that activities of the petitioner are not liable to service tax under the Finance Act, 1994 and to this extent, the show cause notice may be withdrawn. However, it is stated that certain clarifications are still needed regarding income from other sources. Relevant portion of the affidavit reads as under:-

> "3. I say that on the basis of information retrieved from the Income Tax Department, a Show Cause Notice was issued to the Petitioner Shri. Amrish Rameshchandra Shah by Deputy Commissioner, Division-X, CGST & CX, CGST Mumbai South vide F.No. CGST/MS/Dn-X/R-1/ITR-TDS/UR/345/ 2020-21 dated 30.12.2020 for Rs.32,60,835/- for the period October, 2014 to June, 2017.
>
> 4. I say that on the basis of verification, the activities undertaken by the Petitioner at Ernst and Young LLP & SRBC and Associates LLP as a partner (profit sharing) or salaried individual are not liable to Service Tax under the Finance Act 1994. To this extent, the Show Cause Notice may be withdrawn.
>
> 5. However, the income from other sources requires certain

> clarification. On receipt of such satisfactory clarification, the proceedings may be concluded by the adjudicating authority.
>
> 6. As the Honourable Court is seized of the case, it is requested that the petitioner may be directed to appear before the adjudicating authority for the clarifications as mentioned in Para 5 above."

6. Mr. Shah, learned counsel for the petitioner submits that in view of the admission by the respondents, the impugned show cause notice may either be withdrawn or quashed by this Court. In so far clarifications *vis-a-vis* income from other sources is concerned, he submits that if respondents have any material at their disposal, they may issue fresh show cause notice which will be contested by the petitioner since the impugned show cause notice does not pertain to income from other sources.

6.1. Mr. Shah also submits that if a fresh show cause notice is issued, petitioner would not raise the question of limitation.

7. Mr. Mishra submits that because of the stay order passed by this Court, respondents could not proceed with the matter. Therefore, the stay order may be withdrawn to enable the respondents for doing the needful.

8. After hearing learned counsel for the parties and on due consideration, we set aside and quash the impugned show cause-cum-demand notice dated 30.12.2020 issued to the petitioner by respondent No.3, clarifying that respondents would be at liberty to pursue with the verification as to income of the petitioner received from other sources and may issue fresh show cause notice in accordance with law if the circumstances so warrant.

9. Writ petition is accordingly disposed of.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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