IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-07-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.12026 of 2012
And
MP No.1 of 2012

M/s.Kavee Marketing,
Represented by its Proprietor,
A.K.Elangovan,
No.313/118 Public Office Road,
Velipalayam,
Nagapattinam. ..Petitioner

vs.

1. The Assistant Commissioner,
   Central Excise Division,
   Karaikal, Office of the Assistant Commissioner
   of Central Excise,
   No.1 Nool Kadai Street,
   Karaikal-609 602.

2. Bharat Sanchar Nigam Limited (BSNL),
   Represented by its General Manager,
   Kumbakonam. ..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Prohibition, prohibiting the first respondent from proceeding further with his communication dated 25.11.2011 in C.No.V/15/15/11/2011 ST (Adj) as it is without jurisdiction.

For Petitioner : Mr.N.Murali Kumaran for
M/s.MCGAN Law Firm.

For Respondent-1 : Mr.V.Sundareswaran,
Standing Counsel.

For Respondent-2 : Mr.K.Anbarasan

ORDER

The show cause notice dated 25.11.2011 issued by the first respondent regarding non payment of service tax, is under challenge in the present writ petition.

2. The petitioner is a dealer in SIM Card and Recharge Coupon of the Bharat Sanchar Nigam Limited, hereinafter referred to as 'BSNL', in short. The price of the SIM Card as well as the Recharge Coupon are fixed by the second respondent. The petitioner and persons similarly placed like that of the petitioner purchased the same at a discount and sell it to the end users. The selling price of SIM Card and Recharge Coupon are fixed and controlled by BSNL and sellers like the petitioner have no control over the same.

3. The petitioner states that the business is limited to the extent of purchasing and selling the SIM Cards and Recharge Coupons in the hands of subscribers of BSNL. The said BSNL is liable to discharge the service tax as prescribed under the Service Tax Law and are discharging the service tax liability to the Department of Service Tax as required under the Law. Under these circumstances, the petitioner claims no liability.

4. The learned counsel appearing on behalf of the petitioner made a submission that the issue was considered by this Court in number of writ petitions and decisions are rendered in favour of the persons, who all are similarly placed like that of the petitioner. While-so, there is no reason to issue further show cause notice to the writ petitioner.

5. This Court is of the considered opinion that even in such cases, there are some judgments, which all are applicable with reference to the facts and circumstances of the case. It is left open to the writ petitioner to adjudicate the factual aspects before the authorities, enabling them to consider the same and pass order on merits and in accordance with law. Contrarily, the High Court need not entertain a writ petition against a show cause notice in a routine manner.

6. The writ against a show cause notice may entertain only on exceptional circumstances where the authority without issuing such notice is incompetent under the provisions of the Statutes or the Rules. If there is an allegation of mala fide,

then also writ can be entertained. In such circumstances, the authorities against whom such allegations on mala fide are raised is to be impleaded as a party respondent in his personal capacity in the writ proceedings.

7. In respect of the merits of the case, the petitioner has to submit the defence statement along with the judgments relied on as well as the documents and the evidences, if any, for the purpose of considering the same by the authorities.

8. In the present case, the show cause notice itself was issued in the year 2011 and due to the pendency of the writ petition, the writ petitioner has not submitted the defence statement and the authorities have also not passed orders.

9. This being the factum established, the petitioner is at liberty to submit his defence statement/explanation along with the documents as well as the judgments passed by the High Court in the subject, within a period of four weeks from the date of receipt of a copy of this order. On receipt of any such explanations/documents etc., from the petitioner, the respondent is directed to consider the same on merits and in accordance with law, within a period of twelve weeks from the date of receipt of the defence statement from the petitioner.

10. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

Svn

To

1. The Assistant Commissioner,
   Central Excise Division,
   Karaikal, Office of the Assistant Commissioner
   of Central Excise,
   No.1 Nool Kadai Street,
   Karaikal-609 602.

2. The General Manager,
   Bharat Sanchar Nigam Limited (BSNL),
   Kumbakonam.

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AK-II(CO)
SU(12/08/2021)