IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18832 of 2016
and WMP.No.16440 of 2016

Indian Red Cross Society
Vellore District Branch
Rep. by its Secretary
Anna Salai (Officer's Line)
Vellore. ... Petitioner

Vs

1.The Chairperson,
Central Board of Excise and Customs,
North Block,
New Delhi - 110 001.

2.The Commissioner of Central Excise,
Chennai III, Government of India,
Ministry of Finance,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Deputy Commissioner of Central Excise,
Service Tax (Survey, Intelligence and
Research Unit), Central Revenue Building,
Vellore Division, Vellore - 632 001.

4.The Assistant Commissioner of Central Excise,
(Survey, Intelligence and Research Unit),
Vellore Division, Vellore - 632 001.

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5.The Technical Officer,
Tax Research Unit (TRU),
Department of Revenue,
Ministry of Finance, Government of India,
New Delhi - 110 001.

6.M/s.Canara Bank,
Chief Manager,
Anna Salai, (Officer's Line)
Vellore.

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7.Alankar Hotel,
Proprietor Mr.Venkadasubbu,
Anna Salai, (Officer's Line)
Vellore. ...Respondents (R6 & R7 are impleaded as per order dated 29.07.2016 by TSSJ in WMP.21801 of 2016 in WP.No.18832 of 2016).

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorified Mandamus to call for the entire records of the 5th respondent's proceedings in F.No.336/7/2016 TRU dated 23.03.2016 and quash the same and thereby direct the respondents herein to exempt the petitioner Society from paying the Service tax and consequently forbearing the respondents herein from any way insisting the petitioner society to obtain Service Tax Registration Certificate and also taking coercive proceedings against the petitioner for recovery of Service tax also taking coercive proceedings against the petitioner for recovery of Service tax in pursuance to the 3rd respondent's letter in C.No.IV/16/69/2012 - S.Tax (SIR) (Vol.IV) dated 21.11.2013 followed by the 4th respondent's letters in C.No.IV/16169/2013 (S.I.R.)(Vol.IV) dated 16.09.2015 and C.No.IV/16/05/2016 S.Tax dated 05.04.2016.

For Petitioner : Mr.K.A.Ravindran

For Respondents : M/s.R.Hemalatha
Senior Standing Counsel
for R1 to R5

: No Appearance for R6 & R7

ORDER

The petitioner has challenged the impugned communication dated 23.03.2016 of the fifth respondent who is an officer of the 1st respondent and to forbear the other respondents from levying service tax or insisting on petitioner obtaining service tax registration and to further restrain the third respondent from taking any coercive proceedings against the petitioner.

2. The petitioner had earlier filed W.P.No.33773 of 2015 to direct the first respondent to exempt the petitioner from payment of service tax under Notification No.16/2002-ST dated 02.08.2002 and to consequently forbear the respondents therein from in any manner insisting the petitioner to obtain service tax registration and also from taking any coercive proceedings against the petitioner for recovery of service tax in pursuance of letter dated 21.11.2013 followed by another letter dated 16.9.2015.

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3. The said writ petition was disposed of by an order dated 12.2.2016 by this Court without expressing an opinion on merits of the case by directing the first respondent to consider petitioner's representation dated 15.10.2014 and to pass orders on merits in accordance with law within a period of four weeks from the date of receipt of the copy of the order.

4. Pursuant to the aforesaid order, the first respondent has now issued the impugned communication dated 23.3.2016 and has concluded that petitioner was liable to pay tax as individual seeking tax separate exemptions are not to be entertained to and therefore it has been decided not to extend any exemption to the petitioner for renting of immovable property to business entities with the following observation:-

> A. Service tax being indirect tax in nature, its incidence is on the service recipient (business entities). There is no merit in extending exemption to services received by business entities. Service tax is available as credit to business entities.
>
> B. It is a conscious policy of the government to minimise exemptions to broaden the tax base as a precursor step towards GST.
>
> C. The revenue garnered from the service tax levy is utilised by the government in furtherance of the growth and social welfare policies of the Government.

5. The case of the petitioner in this writ petition is that it is a charitable institution recognised under the provisions of the Income Tax Act, 1961 and therefore the petitioner cannot be saddled with service tax liability even if the petitioner was renting out its premises to business entities on the income generated by it is used for carrying out its charitable activities.

6. According to the petitioner, it is entitled to exemption under Notification No. 25/2012-ST dated 20.6.2012. It is therefore submitted that the communications of the Respondents asking the petitioner to obtain service tax registration and pay service tax was unsustainable.

7. Heard learned counsel for the petitioner and the learned counsel for the respondent. The challenge to letter dated 21.11.2013 of the third respondent in W.P.No.33773 of 2015 was unwarranted inasmuch as it was merely a communication asking the petitioner to obtain service tax registration or in the alternative to avail the benefit of Voluntary Compliance Encouragement Scheme, 2013 which was in force up to 31.12.2013. If the petitioner was of the view that it was not liable to tax in terms of the above notification, it could have ignored the aforesaid letter/communication. The

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said communication was an innocuous communication merely nudging the petitioner to obtain registration and pay service tax or any alternative avail the benefit of the Voluntary Compliance Encouragement Scheme, 2013. However, the petitioner approached the first respondent for an individual exemption and thereafter filed the said writ petition. Pursuant to the aforesaid order in the said writ petition, the impugned order has been passed. In my view, there was no necessity on the part of the petitioner to have filed the said writ petition and invited the above observation.

8. If the petitioner felt that it was not liable to pay tax for renting of its immovable property based on the above Notification No. 25/2012-ST dated 20.6.2012, it should have ignored the persuasion of the officers of the Service Tax Department. The petitioner has necessarily invited an adverse observations from the 1st/5th respondent. In my view, the 1st/5th respondent was forced to give the above clarification based on the directions of this Court in W.P.No.33773 of 2015. The observation contained therein would necessarily imply that the officers under the hierarchy of the Central Excise Act, 1944 as made applicable to Finance Act, 1994 will be bound to follow the same. Therefore, the impugned order is liable to be quashed. At the same time, jurisdictional officer within whose jurisdiction the petitioner operates is given liberty to issue appropriate show cause notice under section 73 of the Finance Act, 1994 to the petitioner within a period of 60 days from date of communication of this order.

9. The petitioner shall thereafter give its reply explaining the reasons as to why it is not liable to pay service tax for renting of immovable property to the banks in terms of Notification No. 25/2012-ST dated 20.6.2012. The jurisdictional officer shall adjudicate the show cause notice without getting influenced by any of the observations in the impugned communication of the 1st/5th respondent which stands quashed. Such order shall be passed within a period of three months thereafter after giving the petitioner an opportunity of being heard and filing its written reply/representation, Needless to state, the petitioner will be also entitled to raise all the defences available including that of limitation in such show cause notice.The period during the operation of the order in WP.No.33773 of 2015 and during the pendency of this writ petition and 60 days for issuing show cause notice shall stand excluded.

10. Writ petition stands this post with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

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