IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1837 OF 2021
AND
C.M.P.NOS.11611 & 11612 OF 2021

1. V.S.Ekambaram

2. V.E.Gayathri ... Appellants/Petitioners

.Vs.

1. The Additional Commissioner, Chennai-III,
Office of the Commissioner of Central Excise,
Chennai-III Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Superintendent (SIR),
Office of the Commissioner of Central Excise,
Survey Intelligence and Research Cell,
Tambaram-II Division,
Plot No.40, Ranga Colony,
Rajakilipakkam,
Chennai - 600 073. ... Respondents/Respondents

PRAYER:-

Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed by the learned single Judge dated 10.02.2021 in W.P.No.26356 of 2014.

PRAYER IN W.P.NO.26356 OF 2014:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent culminating in his impugned Show Cause Notice No.27/2014 (ST) bearing C.No.V / 15 / RIS / 33 / 2014 -ADC-C.Ex.-Adj.-III, dated

21.08.2014, quash the same and direct the 1st Respondent to redo the adjudication in accordance with law after completion of investigation by the 2nd respondent.

For Appellant : K.Ashok Kumar

For Respondents : Ms.R.Hemalatha
Senior Standing Counsel
(Central Excise)

JUDGMENT

(Delivered by Krishnan Ramasamy, J.,)

This Writ Appeal has been directed against the order of the learned single Judge passed in W.P.No.26356 of 2014 dated 10.02.2021.

2. The above Writ Petition was filed, challenging the impugned show cause notice No.27/2014 (ST) bearing C.No.V/15/ RIS/33/2014-ADC-C.Ex.-Adj.-III dated 21.08.2014 issued by the 1st respondent herein, quash the same and direct the 1st respondent to redo the adjudication in accordance with law after completion of investigation by the 2nd respondent.

3. The Writ Court, on 10.02.2021 after hearing both the parties, passed the following order:

> "2. It is a case of the petitioner that the petitioner was under a bona fide belief that he was not liable to pay service tax for renting of immovable property and that while the matter was pending before the second respondent, the first respondent issued the impugned show cause notice thereby denying the benefit of waiver from payment of Parenti under section 73 (3) of the Finance Act,1994.
>
> 3. Though no counter has been filed, I am of the view that this writ petition is liable to be dismissed. The petitioner has been issued with the impugned show cause notice only. It is for the petitioner to file reply to the same and participate in the adjudication process under the Finance Act,1994.
>
> 4. Therefore, I am refraining from making any observations on the merits on the case of the

petitioner. It is open for the petitioner to make appropriate submission before the respondent in the said show cause proceeding.

5.Petitioner is therefore directed to file a reply to the impugned show cause notice within a period of 30 days from date of receipt of this order. The 1st respondent shall pass appropriate order on merits within a period of three months from receipt of this order.

6.Before passing such order, petitioner shall be heard either in person or through his representative physically or through video conference. This Writ petition stands disposed with the above observations. No cost. Consequently, miscellaneous petition is closed."

4. Aggrieved over the said order, the present Writ Appeal has been preferred by the writ petitioners, contending that they are not liable to pay any service tax on rental income in respect of an immovable property. It is further contended that the investigation has not been completed and even before completion of investigation, the 1st respondent has quantified the amount payable towards service tax. Therefore, they prayed to interfere with the impugned show cause notice and direct the 1st respondent to redo the adjudication in accordance with law.

5. By the impugned show cause notice, dated 21.08.2014, the 1st respondent directed the writ petitioners to show cause as to why:

"(i) an amount of Rs.18,57,144 (Rupees Eighteen lakhs fifty seven thousand one hundred and forty four only) (S.Tax + Edn. Cess +SHE Cess) being the service tax liability cast upon them on the rent collected from their tenants during the period from April 2009 to December 2013 as mentioned in the earlier paragraphs, should not be demanded under Proviso to Section 73(1) of the Finance Act, 1994;

(ii) the amount of Rs.83,797/- being the service tax amount paid by them through various challans as mentioned in the above para, should not be appropriated against the total service tax liability mentioned at (i) above.

(iii) an interest amount, at the appropriate rate, should not be demanded on the Service Tax, Education Cess and Secondary Higher Education Cess liability as mentioned in (i) above, under Section 75 of the Finance Act 1994;

(iv) a Penalty should not be imposed on them under Section 76, 77 and 78 of the Finance Act, 1994 for the contraventions mentioned supra."

6. The learned Senior standing counsel appearing for the respondents contended that the appellants have not raised any jurisdictional issue with regard to the issuance of the impugned show cause notice and since the show cause notice was not challenged on the basis of jurisdiction, normally the Writ Court will not interfere with the said proceedings. Therefore, he prayed for the dismissal of the Writ Petition.

7. Heard the learned counsel appearing for both parties and perused the entire materials available on record as well as the order of the learned single Judge.

8. Since the Writ Petition was filed challenging the impugned show cause notice, the Writ Court did not want to interfere with the same and directed the writ petitioners to file a reply within a period of 30 days from the date of receipt of a copy of the order. We also do not find any infirmity in the said order. We are also of the same view that no interference is required at the stage of show cause notice.

9. The appellants raised a point that the demand was quantified even when the investigation was in process. It is not for the appellants to contend that the investigation was not completed before the issuance of the show cause notice. In fact, if there were any materials available to issue the show cause notice even before the completion of investigation, the 1st respondent can issue show cause notice. In the present case, it is for the respondent to take a decision whether sufficient material is available to issue show cause notice or not and the appellants cannot have any say on this aspect. Therefore, the contention raised by the appellants that the impugned show cause notice is liable to be quashed since it has been issued without completion of the investigation, has no substance.

10. Therefore, we are not inclined to interfere with the order of the learned single Judge and the same is hereby confirmed.

11. Accordingly, the Writ Appeal fails and it is dismissed. The appellants are at liberty to file a reply within a period of 30 days from the receipt of receipt of a copy of this order. On receipt of the reply, the 1st respondent is directed to pass

appropriate order on merits and in accordance with law, within a period of three months thereafter. The petitioner shall be heard either in person or through his representative physically or through video conference. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

suk/jd

To

1. The Additional Commissioner, Chennai-III,
Office of the Commissioner of Central Excise,
Chennai-III Commissionerate,
26/1, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Superintendent (SIR),
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W.A.NO.1837 OF 2021

SSI(CO)
PBS/08/12/2021