IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.22042 OF 2021
AND
W.M.P.NO.23261 OF 2021

(THROUGH VIDEO CONFERENCING)

Mr.P.Mahadevan
... Petitioner

Vs

Assistant Commissioner,
Office of the Assistant Commissioner of
GST and Central Excise, Coimbatore I Division,
1441, Eigi Equipments Building,
Ground Floor, Trichy Road,
Coimbatore - 641 018.
... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records of the impugned show cause notice dated 30.12.2020 bearing C.No.IV/09/43/2020 ST Adjn, SI.No.26/2020-AC and DIN:20201259XM0000725127 issued by the respondent and quash the same and consequently, direct the respondents not to take any coercive actions against the petitioner, in pursuance to the impugned Show Cause Notice dated 30.12.2020.

For Petitioner : Mr.N.S.Ramanan

For Respondent : Mr.A.P.Srinivas, Sr. Standing Counsel

ORDER

The petitioner has challenged the impugned show cause notice dated 30.12.2020 issued by the respondent on the ground that the show cause notices were time barred. The further case of the petitioner that the petitioner had also obtained sales tax registration on 04.02.2015 and the writ petitioner was required to file a return on 15.06.2015 and therefore, the impugned show cause notice dated 30.12.2020 issued was time barred under the limitation under Section 73 of the Finance Act, 1994 amended made it clear that show cause notice is time barre. It is further case of the petitioner that the petitioner had obtained registration for providing Commercial Training / Coaching Services as defined under Section 65 (26) read with Section 65 (27) of the Finance Act, 1994. It is further submitted that entire demand based on the income returns was improper and the petitioner cannot be made liable to pay tax. In this connection reference was made under Circular No. 59/8/2003 dated 20.06.2003.

2. In the affidavit, the petitioner has also relied on certain decisions contained in Central Excise Act, in the case of Nizam Sugar Factory Vs. Collector of Central Excise, AP., reported in 2006 (197) ELT 465 and Caprihans India Ltd Vs. Commissioner of Central Excise, Surat, reported in 2015(324) ELT 8. From the above, the petitioner had relied on the judgment of the Bombay High Court in the case of Amrish Rameshchandra Shah Vs. Union of India and others, dated 08.03.2021. I have perused the affidavit filed in support of this writ petition. I have considered the arguments advanced by the Learned counsel for the petitioner.

3. There is no merits in the writ petition and the petitioner has to participate in the show cause notice proceedings initiated by the respondent by filing suitable reply. Reference to the definition of Commercial Coaching Centre and Service as per Sections 65 (26) and (27) of the Finance Act, 1994 is of no significance, after the advent of the negative list of the new definition of service under the Finance Act, 1994 with effect from 01.07.2012. The definition of service under Section 65 (B) (44) is very wide and includes every activity carried out by a person to another person for consideration other than those expressly excluded in the definition and those which fall under the purview of the negative list under Section 65 (D) or are exempted under the provisions of mega exemption issued under Section 93 of the Finance Act, 1994. Whether the writ petitioner has made out a case that the show cause notice was time barred or not is to be decided in the light of the averments in the show cause notice issued under Section 73 of the Finance Act, 1994. The Income Tax return filed by the writ petitioner on 26.10.2015 declares the income received by the writ petitioner as a faculty member in several educational institutions. The petitioner would have received these incomes over a period of time.

4. The provisions of the place of Provisional Service Rules and point of Taxation Rules, 2011 as amended have to be

considered for conclusion as to whether the show cause notice issued within time barred or beyond time. Since several disputed questions of fact have to be decided, this exercise cannot be taken under Article 226 of the Constitution of India. Therefore, there are no merits in the present case . Therefore, the writ petition is liable to be dismissed. The petitioner is therefore directed to file reply to the show cause notice, within a period of 30 days from the date of receipt of this order. Thereafter, the respondent shall pass appropriate order on merits and in accordance with law, within a period of three months from the date of a reply to the impugned show cause notice from the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nst/ssn

To

Assistant Commissioner,
Office of the Assistant Commissioner of
GST and Central Excise,
Coimbatore I Division,
1441, Eigi Equipments Building,
Ground Floor, Trichy Road,
Coimbatore - 641 018.

+1cc to Mr.N.S.Ramanan, Advocate, S.R.No.57947

W.P.No.22042 of 2021
and
W.M.P.No.23261 of 2021

SS(CO)
RLP(16/12/2021)