IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.441 of 2022
and
W.M.P.Nos.495 & 496 of 2022

(Through Video Conferencing)

P.Durairaaj
Income Tax Pan: AGPPD6832J ... Petitioner

Vs.

The Assistant Commissioner of GST and Central Excise,
Purasawalkam Division,
Chennai North Commissionerate,
1st Floor, Plot No.2054,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai - 600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the Respondent relating to the impugned Show Cause Notice vide C.No.GEXCOM/ADJN/ST/2126/2021-CGST-DIV-PUR-COMMRTE-CHENNAI(N) dated 22.10.2021, quash the same as illegal, incompetent and unconstitutional.

For Petitioner : Mr.Vikram Veerasamy
for Mr.Salai Varun

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

Mrs.Hema Muralikrishnan, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

3. The petitioner has challenged the impugned Show Cause Notice dated 22.10.2021 bearing reference C.No.GEXCOM/ADJN/ST/2126/2021-CGST-DIV-PUR-COMMRTE-CHENNAI(N) as having been issued without jurisdiction by wrongly invoking proviso to Section 73 of the Finance Act, 1994.

4. The learned counsel for the petitioner submits that the issue is now covered in favour of the petitioner in the light of the Decision of the Calcutta High Court in Simplex Infrastructures Limited Vs. Commissioner of Service Tax, Kolkata, 2016 SCC Online Cal 571, (2016) 93 VST 10.

5. A specific reference was made to paragraph 56 and 57 of the order which reads as under:-

> "56. In the instant case the impugned show cause notice has admittedly been issued much beyond 18(Eighteen) months from the date when, according to the Department, the service tax was payable by the Petitioner. However, the Department invoked the extended period of limitation. In the Impugned notice it is stated inter-alia as follows:-
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> > "It would be evident from the foregoing that had the investigation not been conducted, the fact of providing such service by the said noticee would have remained unearthed. Hence, the extended period of 5 years is invocable for issuing show cause notice to the said noticee as per proviso to Section 73(1) of the said Act since the said noticee wilfully suppressed the material facts to the Department with intent to evade payment of service tax and education cess as stated in foregoing paragraphs."
>
> 57. The question is whether the Department was justified in invoking the extended period of limitation for the purpose of issuing the impugned show cause notice. I am of the view that a mere mechanical reproduction of the language of the proviso to Section 73 (1) of the Finance Act, 1994 does not per se justify invocation of the extended period of limitation. A mere ipse dixit that the noticee wilfully suppressed the material facts with intent to

evade payment of service tax is not sufficient. The notice must contain particulars of facts and circumstances in support of such allegation. Even if such particulars are not included in the notice, the Department should be in a position to justify and / or substantiate its allegation of suppression of material facts on the part of the noticee."

6. The learned counsel for the petitioner has also drawn my attention to proviso to Section 73 of the Finance Act, 1994. However, the petitioner has not explained on facts how the above decisions and provisions are not attracted and why no case was made for suppression of facts. It is a matter to be decided on facts based on reply before the adjudicating authority. The adjudicating authority is not incompetent to decide the issue relating to limitation.

7. It is therefore open for the petitioner to substantiate the case before the respondent that there is no case made out for invoking extended period of limitation under Proviso to Section 73 of the Finance Act, 1994.

8. Under these circumstances, I do not find any merits in the present writ petition challenging the Show Cause Notice. The petitioner has an alternate remedy which is more efficacious. In case an adverse order is passed, the petitioner still has an alternate remedy by filing an appeal before the Appellate Authority. The petitioner cannot short circuiting the show cause proceedings by filing a writ petition by merely citing proviso to Section 73 of the Finance Act, 1994 and few passages from the decisions of the Calcutta High Court in Simplex Infrastructures Limited case (referred to supra). There is no merits in this writ petition.

9. This writ petition stands dismissed with the above observations. No costs. Consequently connected Writ Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Assistant Commissioner of GST and Central Excise,
Purasawalkam Division,
Chennai North Commissionerate,
1st Floor, Plot No.2054,
12th Main Road, 2nd Avenue,
Anna Nagar, Chennai - 600 040.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.2661

W.P.No.441 of 2022
and
W.M.P.Nos.495 & 496 of 2022

BS(CO)
CB(03/02/2022)