IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.1546 of 2023
and
W.M.P. No.1637 of 2023

M/s.Jayalakshmi Security Service,
Represented by its Proprietor,
M.Shanmugam .. Petitioner

vs

The Assistant Commissioner of CGST & Central Excise,
Madhavaram Division,
Chennai North Commissionerate,
Newry Towers,
No.2054,
I Block, II Avenue,
12th Main Road,
Anna Nagar,
Chennai - 600 040. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified mandamus to call for the impugned proceedings of the respondent in Order-in-Original No.19/2022-2023(ST) dated 25.11.2022 and quash the same as passed without considering the documents filed by the petitioner on 6.5.2022 and so passed in violation of principles and further direct the respondent to consider the objections dated 28.4.2021 and the documents filed by the petitioner on 6.5.2022 and drop further proceedings against the petitioner.

For Petitioner	:	Mr.P.Rajkumar
For Respondent	:	Mr.A.P. Srinivas, Senior Standing counsel

ORDER

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr. A.P. Srinivas, learned Senior Standing counsel accepts notice for the respondent.

3. This writ petition has been filed challenging the order in original dated 25.11.2022. As per the impugned order, the petitioner has been called upon to pay an amount of Rs.11,47,495/- towards Service Tax and Cess on the amount received for the provision of Services for the Financial year 2015-16 under proviso to Section 73 of the Finance Act, 1994.

3(b). The petitioner has also been imposed with a penalty of Rs.11,47,495/- as per Section 78 of the Finance Act, 1994 for suppression of receipt of income from customers with an intent to evade the Service Tax. The respondent has also imposed a penalty of

Rs.10,000/- on the petitioner under Section 77(2) of the Finance Act, 1994.

4. Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.A.P. Srinivas, learned Senior Standing counsel for the respondent.

5. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice. According to the petitioner they are providing security services to Schools, Colleges, Temples and Hospitals, which are exempted from payment of Service Tax. The petitioner had submitted a reply on 28.04.2021 to the show cause notice issued by the respondent prior to passing of the impugned order dated 25.11.2022. He was also granted personal hearing on 05.01.2022 as seen from the impugned order dated 25.11.2022. Another personal hearing was also granted to the petitioner by the respondent on 26.04.2022. During the personal hearing as seen from the impugned order, the petitioner had sought time to file supporting documents viz., Work Sheet, Form -26 AS, ITR-2015-16 and ST-3 returns etc., on or before 06.05.2022.

6. The petitioner has also filed a covering letter dated 06.05.2022 along with this writ petition which is addressed to the Assistant Commissioner, Madhavaram Division along with enclosures viz., Work

Sheet, Form -26 AS, ITR-2015-16 and ST-3 returns etc.. The said covering letter along with the enclosures have also been received by the respondent on 06.05.2022 as seen from the endorsement made by them in the covering letter of the petitioner dated 06.05.2022. However, in the impugned order in original, dated 25.11.2022, the respondent has erroneously observed that the petitioner has not submitted records / documents despite his assurance given during the personal hearing that he shall submit the supporting documents viz., Work Sheet, Form -26, ITR-2015-16 and Service Tax -III returns etc., on or before 06.05.2022, which was also infact submitted on 06.05.2022 itself as seen from his covering letter dated 06.05.2022 along with the enclosures. By total non application of mind to the fact that the petitioner had submitted the documents referred to supra as undertaken by him during the personal hearing, the respondent has passed the impugned order dated 25.11.2022 without giving due consideration to the supporting documents viz., Work Sheet, Form -26, ITR-2015-16 and Service Tax -III returns etc., produced by the petitioner on 06.05.2022. Being an order passed by total non application of mind to the fact that the petitioner has produced the documents, the impugned order dated 25.11.2022 has to be necessarily quashed on the ground of violation of principles of natural justice and the matter will have to be remanded back to the respondent for fresh consideration on merits and in accordance with law, after giving due consideration to the documents submitted by the petitioner on 06.05.2022 referred to supra.

7. For the foregoing reasons, the impugned order, dated 25.11.2022 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law after adhering to the principles of natural justice and after giving due consideration to the documents produced by the petitioner on 06.05.2022 including granting them a personal hearing. The respondent is directed to pass final orders, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also permitted to produce once again the documents which he had already submitted to the respondent on 06.05.2022.

8. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2023

Index:Yes/No
Neutral Citation:Yes/No
vsi2

ABDUL QUDDHOSE, J.

vsi2

To

The Assistant Commissioner of CGST & Central Excise,
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