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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4044 of 2023(O&M)
Date of Decision: 23.03.2023

M/s. Shiva Transport Company ……... Petitioner

V/s.

Union of India and Others …......Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE AMARJOT BHATTI

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Present: Mr.Sandeep Goyal, Advocate with
Mr. Rishab Singla, Advocate
for the petitioner.

Mr. Tajender K. Joshi, Advocate for the respondent(s).

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Ritu Bahri, J (Oral)

In the present case, as per impugned order (Annexure P-12) dated 30.12.2022, the Assessing Authority has made a demand of Rs.1,87,10,146/-for the period 2016-17 and 2017-18 under Section 70 of the Finance Act, 1994. The short point for consideration in this writ petition is whether the petitioner who claims to be a Goods Transport Agency and is doing the work for FCI, a Food Procurement Agency in agricultural produce and is exempted from Service Tax under Rule 4(b) of the Service Tax Rules, 1994 and is exempted from Service Tax under Entry No.21 of the Notification No.25/2012-ST dated 20.06.2012, has to pay the above said amount only on the ground that apart from producing Form 26A, Bank Statement(s) and copy(ies) of contract and the tender(s) allotted to them, he did not produce the consignment note(s) and hence in this backdrop, the order (Annexure P-12) is not sustainable.

Learned counsel for the petitioner further states that if the Assessing Authority would have given him one opportunity, he would have produced the consignment note(s) before the Assessing Authority as well to complete the entire evidence. Learned counsel for the respondent(s) at this stage, has not been able to dispute that under Entry No.21 of the Exemption Notification any Transport Agency who is doing the work of transportation of food grains is exempted from Service Tax. However, he states that consignment note(s) should have been produced by the petitioner. In the present case, only on non-production of consignment note(s), the demand made vide order dated 30.12.2022 (Annexure P-12) is not likely to be sustained.

Since the impugned order has been passed without any giving opportunity to the petitioner to produce the relevant documents which were in his custody, the present writ petition is allowed and the order dated 30.12.2022 (Annexure P-12) is being set aside and the matter is being remanded back to the Assessing Officer to pass a fresh order after giving one opportunity to the petitioner to produce the consignment note(s) and then pass a speaking order keeping in view the Entry No.21 of the Exemption Notification, in accordance with law.

23rd March, 2023
Sonia Puri

(RITU BAHRI)
JUDGE

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No