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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3559 of 2025

Jyoti Maheshwari
Versus
The State of West Bengal & Ors.

Mr. Anirban Banerjee
Mr. Sayantan Banerjee
Mr. Deep Agarwal
... For the petitioner.

Mr. Anirban Ray, GP
Md. T. M. Siddiqui, AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the State.

Mr. Uday Sankar Bhattacharya
Mr. Tapan Bhanja
... For the CGST authorities.

1. Since the respondents are represented in Court today, the matter is taken up for consideration without the affidavit of service.

2. Challenging the order passed under Section 74 of the Finance Act, 1994 (hereinafter referred to as the "said Act") dated 26th October/13th November 2024 for the Financial Year 2016-17, the instant writ petition has been filed.

3. The petitioner claims to be an individual operating the security service organization and having regard to the Notification published by the Government of India, Ministry of Finance, Department of Revenue on 20th June, 2012 which was later modified vide Notification

dated 1st March, 2025, the petitioner is not liable to make payment of service tax, such the liability is on the person receiving the service.

4. According to Mr. Banerjee, learned advocate representing the petitioner since the petitioner supplies man power and provides services through them, having regard to the above Notifications, the petitioner is exempt from payment of any service tax.

5. Mr. Bhattacharya, enters appearance on behalf of the respondents.

6. Heard the learned advocates appearing for the respective parties. Although, diverse issues have been raised by the petitioner, inter alia, including the non-service of show cause notice, however, having regard to the fact that an order in original has already been passed in a proceeding where the petitioner had participated and offered explanation, I propose to take up hearing of the writ petition on merits, especially noting that in the order impugned the adjudicating authority while considering the aforesaid two Notifications has concluded that though the petitioner may not be liable to pay service tax in respect of the income received by him from the body corporate, however, such exemption may not extend to the petitioner for income received from other entities and has accordingly confirmed the demand. I also note that in the order impugned the adjudicating authority has

identified 26 number of service recipients who have received services from the petitioner under works contract. On the own showing of the adjudicating authority there are several recipients who are registered as body corporate. It, however, appears that the adjudicating authority by relying on a judgment delivered by the CESTAT Principal Bench, Delhi, dated 13th February, 2013, in the case of ***CCE Bhopal v. Quantum Instruments & Electronics*** has held that since the petitioner had suppressed material facts, the department was correct in invoking the proviso to Section 73(1) of the said Act and by further proceeding on the premise that an offence has been established and the consequential demand having been quantified had confirmed the demand in the show-cause including the interest and penalty.

7. It may, however, be noted that the adjudicating authority in the aforesaid order did not take any steps to identify and segregate the amount received by the petitioner from the recipients who are registered as body corporate, he has simply made the petitioner liable for payment of service tax @ 15% on his entire income by treating the petitioner to be liable to pay service tax, though the petitioner was only liable for payment of service tax in respect of the persons other than recipients who are registered as body corporate.

8. It is, thus, clear that the order as aforesaid has been

passed mechanically and without application of mind. The same appears to be based on no evidence and is perverse. Though, the adjudicating authority was duty bound to adhere to the aforesaid two Notifications and to give benefit thereof to the petitioner, no computation has been made to extend such benefit. The petitioner has, in fact, been penalized for failing to make appropriate disclosure which, in my view, is not permissible. If the law recognizes service recipients to make payment of service tax, the petitioner cannot be made liable to make payment thereof.

9. Having regard thereto, I am of the view that the aforesaid order dated 26th October/13th November, 2024 for the Financial Year 2016-17 cannot be sustained and the same is accordingly set aside and remanded back to the adjudicating authority to decide the exact amount payable by the petitioner, having regard to the two Notifications referred to above.

10. The adjudicating authority is directed to decide the same upon giving an opportunity of hearing to the petitioner as expeditiously as possible, but not later than eight weeks from the date of communication of this order.

11. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)