
(2014) 07 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition Nos. 6558-60 of 2014 (T-TAR)

ALP Consulting Ltd.

APPELLANT

Vs

Assistant Commissioner of Service Tax

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14
Finance Act, 2013 — Section 106, 106(1), 70, 72, 73

Citation : (2014) 47 GST 177 : (2015) 37 STR 693 : (2015) 83 VST 547

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Raghuraman V. and C.R. Raghavendra, Advocate for the Appellant;
Pramod and R.G. Halesha, Advocate for the Respondent

Judgement

B.V. Nagarathna, J.—The petitioner has assailed order dated 31-12-2013, passed by the first respondent - Assistant Commissioner of Service Tax, Bangalore (Annexure "A"). Several other prayers are also sought by the petitioner. At the outset, petitioner's counsel submitted that the writ petition is restricted to challenge made to order at Annexure "A" and that liberty may be reserved to the petitioner to seek other prayers in an appropriate proceeding. Learned counsel for the respondents have no objections to the submission made on behalf of the petitioner. In the circumstances, the legality and correctness of the impugned order dated 31-12-2013, is considered in these writ petitions. The facts germane to the disposal of these writ petitions are that the respondents have initiated Service Tax Voluntary Compliance Encouragement Scheme, 2013, under the provisions of the Finance Act, 2013 [hereinafter, referred to as the "Scheme"]. A copy of the Scheme is annexed at Annexure "B" to the writ petition. The petitioner filed its application under Section 106 of the said Scheme. The first respondent on considering the said application and after hearing the petitioner's counsel has passed the impugned order stating that the application is not being considered having regard to second proviso to Section 106(1) of Chapter VI of the Finance Act, 2013. That order is assailed in this writ petition.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the material on record.

3. During the course of arguments, learned counsel for the petitioner contended that the petitioner is eligible to be considered under the Scheme having regard to sub-section (1) of Section 106 of Chapter VI of the Finance Act, 2013 in view of the fact that no notice or any order of determination under Section 72 or Section 73 or under Section 73A had been issued or made prior to 01/03/2013. That the proviso did not apply to the case of the petitioner and that under the main provision, sub-section (1) of Section 106, the case of the petitioner had to be considered.

4. Per contra, learned counsel for the respondents while supporting the impugned order, stated that the second proviso has been rightly invoked by the first respondent and that the impugned order would not call for any interference.

5. I have perused the impugned order, which is at Annexure "A". It is noted from the said order that a discussion has been made as to whether there was any show-cause notice or determination that was issued or made under Section 73 or under Section 73A of the Act. It is the contention of the petitioner that the earlier proceedings was one under Section 73 of the Act and that Section 73A of the Act was not at all invoked and that for the subsequent period, no notice was issued by the Department and hence, under the main provision of sub-section (1) of Section 106 of the Act, the application of the petitioner had to be considered.

6. Per contra, learned counsel for the respondents while drawing my attention to the second proviso have contended that the earlier order of determination pursuant to show-cause notice dated 19/03/2010 is a bar for consideration of the case of the petitioner under the Scheme. Much stress has been laid on the second proviso to sub-section (1) of Section 106 in that regard. In order to consider these rival contentions, it would be useful at this stage, to extract the relevant provision:--

"106. Person who may make declaration of tax dues.--(1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom,--

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of:--

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated, and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration."

7. Sub-section (2) of Section 106 envisages a situation under which there can be a rejection of the declaration made by assessee. But sub-section (1) of Section 106 deals with a situation where the consideration of the application of the assessee has to be made. In this regard, the focus of attention in this case is on the second proviso to sub-section (1) of Section 106, which states that if there is a notice or order of determination, which has been issued to a person in respect of any period on any issue, no declaration shall be made with regard to tax dues on the same issue for any subsequent period. In this regard, the contention of the counsel for the petitioner has been that in the show-cause notice dated 19/03/2010 culminating in the order dated 23/12/2010, there was no invocation of Section 73A of the Act and therefore the proviso does not apply in the instant case, but the impugned order does not take into consideration that aspect of the matter. There is considerable force in the aforesaid submission inasmuch as the findings given in the order dated 23/12/2010 *prima facie* was with regard to Section 73 of the Act and not Section 73A. But the matter does not rest here. The submission of the petitioner as to whether Section 73A was invoked in the earlier show-cause notice dated 19/03/2010 culminating in the order dated 23/12/2013 is a matter which has to be considered in depth by the first respondent - authority.

8. The other aspect of the matter is, one of the reasons given in the impugned order was that the earlier show-cause notice and the order dated 23/12/2010 was for the period October 2004 to March 2009, part of which period is covered under the Scheme, which was from 01/10/2007 up to 31/12/2012. It was reasoned by the respondent officer that for the period October 2007 to March 2009, there was already an order passed on 23/12/2010 and therefore, the petitioner was not entitled to file the application under the Scheme. That reason is not correct in view of the fact that the period for tax dues is 01/10/2007 up to 31/12/2012. That period cannot be related to any period in respect of which an order has been passed by the authority under Section 73 of the Act. If there were any dues between the aforesaid dates, then the eligibility to file the application under the Scheme would arise provided no order was passed prior to the enforcement of the Scheme on any issue. Therefore, linking the period of tax

dues under the Scheme with the period in respect of which the order dated 23/12/2012 has been passed in petitioner's case is not correct as that order was prima facie not in respect of Section 73A of the Act. In the result, the writ petition is allowed by quashing the impugned order. The matter is remanded to the first respondent to reconsider the issue in light of whether the earlier show-cause notice dated 19/03/2010 culminating in the order dated 23/12/2010 in respect of which certain issues arose are the very same issues which have arisen for the subsequent period namely, April 2012 to December 2012 in respect of which, the petitioner seeks benefit under the Scheme. Since the parties are represented by their respective counsel, the petitioner is directed to appear before the first respondent on 30/07/2014, without insisting on any separate notice from that authority. It is needless to observe that the first respondent on hearing the petitioner's authorised representative shall reconsider the application made by the petitioner under the Scheme in light of the observations made supra and in accordance with law and in an expeditious manner and pass a speaking order.