(2014) 11 KAR CK 0111

In the Karnataka High Court

Case No : Writ Petition No. 47346 of 2013 (T-RES)

C. Krishnappa Enterprises APPELLANT

Vs

The Divisional Controller RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0111

Hon'ble Judges : H.G. Ramesh, J

Bench : Single Bench

Advocate : Nagaraja T., Advocate for the Appellant; P.D. Surana, Advocate for the Respondent

Judgement

H.G. Ramesh, J.—Petitioner is a registered establishment, engaged in Security Service and Parking Service. Respondent invited tender for auction of its vacant stalls/proposed vacant stalls at KBS, NFEF, and MCTC bus stations for a period of one year, three years and five years for selection of licensee. Petitioner was the highest bidder quoting Rs. 7,35,809/- as License fee for a period of three years and the respondent executed an agreement in favour of the petitioner. The respondent issued notice on 17-1-2013 seeking payment of service tax. In this regard, petitioner contends that he has nowhere agreed or the same has not appeared in the agreement. In response to the said notice, the petitioner replied on 7-2-2013 defending that he had no information with regard to the service tax at the time of tender or at the time of notification. The respondent issued further notices seeking payment of service tax with interest. On 10-5-2013, respondent again issued notice alleging that they got adjusted the licence fee of Rs. 7,35,908/-, paid by the petitioner towards the service tax and claiming Rs. 11,04,871/- as amount due from the petitioner and calling upon the petitioner to pay the same on or before 20-5-2013 failing which, it will forfeit the security deposit and would terminate the agreement. The petitioner, through its counsel, issued a legal notice to the respondent to withdraw all their notices and to hold the amount for the purpose for which the petitioner paid by not adjusting or treating any of the amount therein as service tax. In response to the legal notice, the respondent replied through their rejoinder denying all the claims of the petitioner and directed the petitioner to pay the balance licence fee and service tax within 15 days. Aggrieved by the repeated notice, the petitioner is before this Court.

2. Heard the learned counsel for the respective parties.

3. It is the contention of the petitioner that respondent is not the competent authority to insist payment of service tax as per the provisions of the Service Tax Act.

4. In the light of the provisions governing the payment of service tax and fixing the burden on the person who has to pay the same, it is difficult to accept the submission of the learned counsel for the petitioner that the petitioner is not liable to pay the service tax. Further more, as per Clause-6 and 33 of the agreement entered into between the petitioner and the respondent, a duty is cast on the licensee to pay all taxes payable to the State/Central Government which invariably includes service tax also. Clause-20 and 21 of the agreement also empowers the licensee to cancel the agreement and forfeit the security deposit, if the licensee violates the clause to comply with payment of tax payable to State/Central Government or Municipalities or the Local bodies in connection with conducting business in the parking stand.

5. In this view of the matter, the submission of the learned counsel for the petitioner does not appeal to this Court. Learned counsel for the petitioner submits that the petitioner undertakes to pay the service tax, but says it would be difficulty for him to furnish the details.

In view of the submission of learned counsel for the petitioner, it is for the petitioner to pay the service tax within three months and report such payment to the respondent or in the alternate, the respondent shall pay the said tax on behalf of the petitioner and ask the petitioner to reimburse the same within one month. However, liberty is granted to the petitioner to claim exemption from payment of tax, if he is entitled for such exemption. He may file a necessary petition before the appropriate Authority asserting his claim that he is not liable to pay the service tax or to seek an exemption from payment of such tax. In the event of the petitioner being held to be not liable to pay the tax or is exempt from paying such tax, the petitioner is entitled to claim the refund already remitted by him. Accordingly, the petition is disposed of.

