(2013) 01 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 24870 of 2012

Chitra Builders (P) Ltd. APPELLANT

Vs

Additional Commissioner of Customs, Central Excise and Service Tax and Another RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:
Finance Act, 1994 — Section 73(3)

Citation : (2013) 158 CTR 58 : (2014) 44 GST 677 : (2013) 31 STR 515 : (2013) 58 VST 471

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A.K. Shukla, Alok Shukla and S. Lesi Saravanan, for the Appellant; G. Masilamani for S. Xavier Felix, for the Respondent

Judgement

M. Jaichandren, J.—This writ petition has been filed praying that this Court may be pleased to issue a writ of mandamus directing the

respondents to return to the petitioner, a sum of Rs. 2 crores, collected by the respondent Department, under coercion, during the search

conducted by it at the branch office of the petitioner company, located at 119, Amaravathy Second Street, Gurusamy Nagar, Bharathiar University

Post, Coimbatore, on 1st March, 2012. It has been stated that the petitioner is registered with the Central Excise Service-tax Department,

Kolkata, for the payment of service-tax, relating to the works undertaken by it, within the jurisdiction of Kolkata Commissionerate, under Chapter

V of the Finance Act, 1994, read with the Service-tax Rules, 1994. As such, the petitioner has been paying the service-tax due from it, regularly,

without any default.

2. It has also been stated that the petitioner is also registered with the Central Excise and Service-tax Department, Rayagada, for the payment of

service-tax, in respect of the works undertaken by it within the jurisdiction of the Rayagada Commissionerate.

3. It has also been stated that the registered office of the petitioner is located at the Centre Point Building, 21, Hemant Basu Sarani, 4th floor,

Room No. 405, Kolkata, West Bengal. During the regular course of its business, the petitioner has executed certain works in the nature of

excavation and sites clearance, for M/s Larsen & Toubro Ltd., as the main contractors for the various infrastructural works which had been

entrusted to it. None of the works had been carried out by the petitioner within the jurisdiction of the Coimbatore Commissionerate. However, a

search warrant had been issued by the Addl. CCE and Service-tax, Coimbatore, the first respondent herein for the search conducted on 1st

March, 2012, at 119, Amaravathy Second Street, Gurusamy Nagar, Bharathiar University Post, Coimbatore. On the same date, a search had

been conducted at the residence of the director of the petitioner company. When the search had been conducted, a deposition had been recorded

from Rakhi Shah, one of the directors of the petitioner company. The said deposition had been recorded under coercion. It is recorded as though

a sum of Rs. 2 crores was being paid to the respondent Department, voluntarily, as part of the arrears of service-tax, due from the company. It is a

well settled position in law that no tax can be collected from the assessee without a proper assessment order being passed in accordance with the

procedures established by law.

4. It has been further stated that the respondent has no jurisdiction to search the premises of the petitioner company, or of its directors, as the

petitioner is not carrying on its business within the jurisdiction of the respondent. Further, the petitioner has not been registered under the

respondent Department at Coimbatore.

5. It has also been stated that there is no liability on the part of the petitioner to pay service-tax. While so, the collection of a sum of Rs. 2 crores

by the respondent Department from the petitioner is arbitrary and illegal. Therefore, the petitioner has filed the present writ petition before this

Court, praying that this Court may be pleased to direct the respondents to return a sum of Rs. 2 crores collected by them from the petitioner during

the search conducted on 1st March, 2012.

6. A counter-affidavit has been filed on behalf of the respondents denying the averments and allegations made by the petitioner in the affidavit filed

in support of the writ petition. In the counter-affidavit filed on behalf of the respondents, it has been stated, inter alia, that the petitioner having

collected a huge amount of Rs. 17 crores as service-tax by raising tax invoice and by enabling the service recipient, namely, M/s Larsen & Toubro

Ltd., to avail the input service credit, does not have the locus standi to claim for the return of the sum of Rs. 2 crores, paid by the petitioner

company, voluntarily, during the search conducted, on 1st March, 2012, to be adjusted against its service-tax liability. The said amount had been

paid by the petitioner to mitigate the offence committed by it under s. 73(3) of the Finance Act, 1994. While so, it is not proper on the part of the

petitioner to pray that this Court may be pleased to direct the respondents to return the sum of Rs. 2 crores paid on behalf of the petitioner

company, voluntarily, in respect of its service-tax liability. Therefore, the present writ petition filed by the petitioner is devoid of merits and

therefore, it is liable to be dismissed.

7. In view of the averments made on behalf of the petitioner, as well as the respondents and in view of the submissions made on behalf of the

parties concerned, and on a perusal of the records available, this Court is of the considered view that the collection of Rs. 2 crores by the

respondent Department from the petitioner company, during the search conducted on 1st March, 2012, cannot be held to be valid in the eye of

law.

8. Even though it has been stated on behalf of the respondents that a sum of Rs. 2 crores had been collected from the petitioner company,

voluntarily, in respect of its service-tax liability, it has not been shown by the respondent that the petitioner was liable to pay service-tax to the

respondent Department relating to the works being carried on by it during the course of its business. It is a well-settled position in law that no tax

could be collected from the assessee without an appropriate assessment order being passed by the authority concerned and by following the

procedures established by law. However, in the present case, it is noted that no such procedures had been followed by the respondent while

collecting the sum of Rs. 2 crores from the petitioner company, during the search conducted on 1st March, 2012. In such circumstances, this

Court finds it appropriate to direct the respondents to return the sum of Rs. 2 crores collected from the petitioner during the search conducted on

1st March, 2012, within a period of ten days from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No

costs.

