(2015) 03 MAD CK 0641

In the Madras High Court

Case No : Writ Petition Nos. 5452, 5453, 5667-5669, 5727 and 6396 of 2015

Commissioner, Ranipet Municipality APPELLANT

Vs

Commissioner of C. Ex., Chennai-III RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 39 STR 730

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : G. Natarajan, for the Appellant; T. Chandrasekaran, Advocates for the Respondent

Judgement

S. Vaidyanathan, J—Petitioners have come forward with the aforesaid prayer. The Commissioners of respective Municipalities have come forward with these writ petitions praying to quash the notices issued by the third respondent wherein and by which the bank account of the respective municipalities have been ordered to be freezed for non-payment of Service Tax due and payable by them.

2. The petitioners-Municipality are in-charge of water distribution to the respective areas under their jurisdiction. According to the petitioners, they have rented out their immovable properties such as land and buildings to various persons on annual lease to facilitate them to effect the water distribution to the consumers. While so, a show cause notice was issued by the second respondent to the petitioners herein proposing to demand Service Tax on the ground that the petitioners did not register themselves with the Service Tax department for rendering various service to the consumers and collecting fee in the form of parking fees, market fees, bus fees, pay and use toilets, slaughter house charges, etc., to the consumers within their jurisdiction. The petitioners have submitted their reply stating that they are not aware of the Service Tax liabilities under the Finance Act and hence, they did not collect Service Tax from the licencees and/or lessees/contractors. It is further stated that when they resorted to collect the Service Tax from the licencees and/or lessees, they have

approached this Court by filing WP Nos. 8237 of 2013, etc., and they are pending. Due to the pendency of the writ petitions, the petitioners could not collect the Service Tax from the licencees and/or lessees/contractors. In spite of such reply having been given by the petitioners, the second respondent confirmed the proposal and demanded Service Tax together with penalty. Challenging the orders demanding Service Tax, the petitioners have filed appeals before the Commissioner of Central Excise (Appeals), Chennai together with an application for interim stay.

3. In this context, it is necessary to cull out the details of the show cause notice, reply given by the petitioner and the order passed by the respective respondent, the details of which are given below:-

W.P. No. 5452 of 2015 was filed by the Commissioner of Ranipet Municipality. The second respondent issued a show cause notice dated 3-10-2012 and another show cause notice dated 15-7-2013. A reply dated 10-7-2013 was given to the show cause notice dated 3-10-2012 citing the pendency of writ petitions filed by the licencees/contractors before this Court and therefore, they could not comply with the demand for payment of Service Tax demand. In the meantime, the petitioner municipality also filed a statutory appeal before the Commissioner of Central Excise (Appeals) together with a petition for interim stay. The appeal is pending. Pending the appeal, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

Similarly, in the case of the petitioner in WP No. 5453 of 2015 namely Commissioner of Krishnagiri Municipality, a show cause notice dated 3-10-2012 and 19-10-2012 were issued by the second respondent for which a reply was sent by them. Thereafter, an order dated 31-7-2013 was passed by the second respondent confirming the levy. On receipt of the final order dated 31-7-2013, the petitioner has sent a letter dated 7-7-2014 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. Such a request for rectification made by the petitioner was rejected by the second respondent on 5-8-2014. Challenging the same, the petitioner has filed a statutory appeal before the Commissioner of Central Excise (Appeals) Chennai and the appeal is pending. Pending the appeal, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 5667 of 2015 was filed by the Commissioner, Arakonam Municipality contending that on 22-10-2012 and 19-4-2013, the second respondent issued a show cause notice proposing to demand Service Tax, for which a reply was given by the petitioner. Notwithstanding such reply, the second respondent confirmed the levy by an order dated 25-7-2013. Thereafter, the petitioner sent a letter dated 26-2-2015 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner has filed a review application before the Additional

Commissioner of Central Excise, Chennai-III & Assistant Commissioner of Central Excise, Ranipet Division and the same is pending. Pending the review application, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 5668 of 2015 was filed by the Commissioner, Walajah Municipality. In this case, show cause notices dated 22-10-2012 and 15-7-2013 were issued by the second respondent. Thereafter, a personal hearing was given to the petitioner municipality during which the Junior Assistant, Walajah Municipality appeared and submitted a written explanation. Notwithstanding such explanation, the second respondent confirmed the levy. Challenging the order for payment of Service Tax with penalty, the petitioner has filed A. Nos. 55 and 56 of 2014 (M-III)(ST) before the Commissioner of Central Excise (Appeals), Chennai and the same is pending. Pending the appeal, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 5669 of 2015 was filed by the Commissioner, Ambur Municipality. Originally, show cause notices dated 22-10-2012 and 15-7-2013 were issued by the second respondent and after getting a reply from the petitioner, orders dated 25-7-2013 and 2-1-2014 were issued against the petitioner confirming the levy. Thereafter, the petitioner sent a letter dated 26-2-2015 purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 5727 of 2015 was filed by the Commissioner, Ambur Municipality. The second respondent issued notice dated 22-10-2012 proposing to levy Service Tax for which a reply was issued by the petitioner. Notwithstanding such reply, an order dated 25-7-2013 was passed by the second respondent confirming the levy. As against the same, the petitioner has filed an appeal in Appeal No. 40057 of 2014 before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai. The said appeal was dismissed by the Tribunal holding that it is not maintainable and liberty was given to the petitioner to prefer an appeal before the competent authority. Thereafter, the petitioner sent a letter dated 27-2-2015 to the second respondent purportedly under Section 74 of the Finance Act requesting to rectify certain mistake, which according to them are apparent on the face of record. The said petition for rectification was pending. Pending the petition for rectification, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

W.P. No. 6396 of 2015 was filed by the Commissioner, Gudiyatham Municipality. Originally, a show cause notice dated 21-10-2013 was issued to the petitioner proposing to impose Service Tax. A reply was given by the petitioner which was not considered and an order dated 25-3-2014 was passed by the second respondent confirming the levy. Challenging the same, the petitioner filed an appeal in No. 10/2014 before the Commissioner of Central Excise (Appeals), Chennai and the said appeal is pending. Pending the appeal, the petitioner''s bank account was ordered to be freezed, which resulted in the petitioner filing this writ petition.

4. Admittedly, to realize the Service Tax amount due and payable by the petitioners, the respective respondent had issued instructions to the respective bank where the petitioner is maintaining their account. Pursuant to such order to freeze the bank account, the Service Tax amount due and payable by the petitioners have been realized. Therefore, no relief could be granted to the petitioners in these writ petitions. It is also brought to the notice of this Court that the petitioners have assailed the final order passed by the respective respondent for recovery of Service Tax amount with penalties before the appellate authority and the appeals filed by them are pending. Therefore, it is needless to mention that the petitioner''s entitlement to get the Service Tax recovered from them will depend upon the outcome of the appeals preferred before the appellate authority.

5. At this juncture, it is brought to the notice of this Court that in view of the freezing of the bank account of the petitioner municipality, they could not pay salary to the staff, meet the day-to-day administrative expenses and to honour the various commitments they owe towards the contractors and or service providers. Therefore, the learned Counsel for the petitioners would pray this Court to issue appropriate direction to the Appellate Authority to dispose of the appeals preferred by the respective petitioners within a time frame.

6. Having regard to the above submission of the counsel for the petitioners, this Court directs the Commissioner of Central Excise (Appeals), Chennai to dispose of the statutory appeals preferred by the respective petitioners on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. In the result, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.