(2015) 01 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 17912 of 2014

Constant Engineering Private Ltd. APPELLANT

Vs

Additional Commissioner of Service Tax and Others RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:
Finance Act, 1994 — Section 73, 87

Citation : (2015) 50 GST 345 : (2015) 40 STR 224

Hon'ble Judges : S.H. Vora, J.;Jayant M. Patel, J.

Bench : Division Bench

Advocate : Dhaval Shah and S.S. Iyer, for the Appellant

Judgement

Jayant M. Patel, J.—The present petition has been preferred by the petitioner seeking appropriate writ to quash and set aside the directions and orders issued from 26.07.2013 to 31.07.2013 at Annexure-A, whereby, in purported exercise of the power under section 87 of the Finance Act, 1994 (hereinafter referred to as the "Act"), pertaining to service tax, the directions were issued to the customers of the petitioner as well as to the bankers of the petitioner.

2. We have heard Mr. S.S. Iyer, learned counsel for the petitioner and Mr. R.J. Oza, learned counsel for respondents No. 1 to 3. Respondent No. 4 though served, none appears on its behalf.

3. Upon hearing the learned counsel appearing for both the sides, it appears that it is an undisputed position that the adjudication for the final demand with penalty or without penalty is yet to be finalised by the competent authority under the Act. Before the proceedings under section 73 of the Act are finalised, the respondents No. 1 and 2 have exercised the power under section 87 of the Act and on the basis of the same, the impugned orders are passed. The attempt on the part of the petitioner was to contend that unless the adjudication is finalised and the demand of tax with or without penalty is confirmed, section 87 of the Act cannot be resorted to.

4. Whereas, Mr. Oza, learned counsel appearing for the respondent authority contended that in the present case, there was statement recorded during the investigation wherein the non-payment of service tax was admitted to the tune of Rs. 2.18 crore.

5. Mr. Suryanarayan, learned counsel for the petitioner however contended that the interpretation of the statement is not correct and in the subsequent correspondence, the petitioner has clarified the relevant aspect and as per him, the amount of Rs. 2.18 crore is without any credit of about Rs. 1 crore available by way of adjustment to the petitioner and the calculation of rest of the amount is also not correct.

6. We need not go into the details of the rival contention of the parties on the aspect of quantification of the demand of tax or the penalty, as the case may be, since the said aspect is yet to be finalised in the adjudication proceeding.

7. Prima facie, we are of the view that when the demand of tax is yet to be adjudicated, it cannot be said as tax payable, for which resort to section 87 of the Act may be available. However, at the same time, it does appear that all impugned communications were issued as back as in the month of July 2013 and the petition is filed before this Court in December 2014 and before this Court further considers the matter, as on today, the amount of Rs. 70.28 lakhs is already recovered and credited in the account of the competent authority.

8. The grievance was raised by the learned counsel for the petitioner that since January 2014, the proceedings before the competent authority who is to adjudicate the matter are not finalised and the period of about 1 year has passed.

9. Under the above circumstances, we find that the adjudication can be ordered to be completed within stipulated time limit and the prospective effect of the impugned orders may remain stayed and the question on the power under section 87 of the Act may not be concluded. We have taken the aforesaid view because the learned counsel appearing for both the sides have declared before the Court that if appropriate interim arrangement is made for finalisation of the adjudication proceedings and for prospective operation of the order, the same would not be objected by their respective clients considering the facts and circumstances of the case.

10. Hence, the following order:

(a) The competent authority before whom the proceedings under section 73 of the Act for adjudication of the tax and other demands are pending shall be finalised preferably within a period of three months from the receipt of the order of this Court and if either party is aggrieved by the adjudication proceedings, the remedy available shall be available before the competent authorities in accordance with law.

(b) Henceforth, the operation of the impugned orders (Annexure-A) shall remain stayed and suspended with the further observation that the amount already recovered pursuant to the orders (Annexure-A) shall be subject to the final quantification of the demand of the tax, if any.

(c) The question for applicability of section 87 of the Act before adjudication proceedings are finalised, shall not get concluded by the present order.

11. The petition is disposed on in terms of the aforesaid directions.