(2014) 05 KL CK 0067

In the High Court Of Kerala

Case No : W.P. (C). No. 12021 of 2014-(C)

E.M. Mani Constructions Pvt. Ltd. — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 37 STR 185

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Aswin Gopakumar, Anwin Gopakumar, Kala G. Nambiar, K. Amal Nath Naik and Roshni Manuel, Advocates for the Appellant; Thomas Mathew Nellimoottil, Advocates for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner, who is a works contractor and who is assessed under the Finance Act, 1994, claims refund of the amounts paid in lieu of the work carried on by him, on the ground, that works carried on with respect to exempted buildings was not leviable to Service Tax; and though tax was paid, it was on protest and it cannot be adjusted towards the pending arrears. In fact the claim of refund was raised before the appropriate authority, who issued a show cause notice, Exhibit P2, directing the petitioner to show cause as to why the claim itself should not be declined for the reasons stated in the notice and in the alternative, if found to be eligible, as to why the same should not be appropriated against the arrears of Service Tax.

2. The learned counsel for the petitioner urges that the authority has issued the show cause notice in a pre-conceived manner and no purpose will be served in relegating the petitioner to go before the authority, since the grounds noticed in the show cause notice would clearly indicate the mind of the authority.

3. The learned Standing Counsel appearing for the respondents, however, would contend that in fact the show cause notice specifically speaks of considering the eligibility and appropriation towards the arrears and this alone would belie the

contention of the petitioner. The learned Standing Counsel placed reliance on a decision of the Hon''ble Supreme Court in The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, wherein the Hon''ble Supreme Court has held that in invocation of Article 226 of the Constitution, unless the High Court was satisfied that the show cause notice was totally non-est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained.

4. In the present case, it is to be noticed that it is not a show cause notice which would lead to any imposition of liability against the petitioner. In fact the petitioner had filed an application for refund and it is towards consideration of the same that the authority has issued a show cause notice, disclosing the prima facie findings, so as to afford an opportunity to the petitioner to put forth contentions which would counter the same effectively. Hence, neither can it be said that the show cause notice is totally non est; nor that it is without jurisdiction. It is under a specific statutory provision that the petitioner has invoked the power of refund conferred on the authority. In such circumstance, this Court is not persuaded to interfere with the proceedings at this stage, especially since entertaining the writ petition would eventually result in either rejection of the claim of the petitioner or allowing the same, which exercise this Court would not be entitled to embark upon, under Article 226. Writ petition dismissed. The petitioner''s contentions are left open.

