(2018) 04 CAL CK 0139

In the Calcutta High Court

Case No : Writ Petition17001 (W) of 2016, CAN 915 of 2018

Mcleod Russel India Ltd., Kolkata. APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 30-04-2018

Acts Referred:
Finance Act, 1995 — Section 73

Citation : (2018) 04 CAL CK 0139

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : K.K. Maiti

Final Decision : Disposed Of

Judgement

This is an application for extension of an interim order. The main writ petition is ready for hearing. A show-cause cum demand notice is under

challenge in the main writ petition. Therefore, it would be appropriate to take up the writ petition for final hearing. CAN 915 of 2018 is disposed of

accordingly. W.P. 17001(W) of 2016 is treated as on dayâ??s list and is taken up for final hearing, by the consent of the parties.

In the present writ petition a Show Cause cum Demand Notice dated May 27, 2016 is under challenge. Learned advocate for the petitioner submits

that, the impugned notice is in violation of the order passed by this Court on November 20, 2014 in the earlier writ petition as also the order dated

January 15, 2016 passed by the appeal Court. Learned advocate for the respondents submits that, the petitioner has a right to reply to the Show Cause

cum Demand Notice. It has not done so. Without a demand being incorporated in the Show Cause cum Demand Notice, the same will be rendered

nugatory.

Consequently, the Court should not intervene. Ordinarily, a Court does not intervene at the show cause stage. In the present cause, a Show Cause

cum Demand Notice issued by the authorities on the self-same subject matter was challenged by the petitioner in W.P. No.48 of 2014. Such writ

petition was disposed of by a judgment and order dated November 20, 2014. The relevant portion of such judgment and order is as follows :-

â??The department has the jurisdiction and obligation to determine whether the writ petitioner is receiving support services from the government.

Therefore, before it could demand or even show cause under Section 73 of the Finance Act, 1995, for Service Tax, it was incumbent upon the

department to make the determination whether the subject service could be classified as a support service and the writ petitioner exigible to service

tax. If the departmentâ??s answer was in the affirmative, only then, a show cause notice and thereafter a demand for service tax could have been

issued.

In those circumstances, the notice dated 20th November, 2013 is quashed and set aside. It will be open for the department to make an adjudication

following an appropriate procedure as to whether the service rendered by the government of Assam to the writ petitioner in its tea plantation is

support service or not and exigible to tax by a reasoned order, upon hearing the writ petitioner or its advocate. Thereafter it can take such steps as it

may be advised.

No further action under the Service Tax Act can be taken by the department against the writ petitioner unless the above fact is established. In making

the determination the department will follow the observations made in M/s Bakhtawar Singh Bal Kishan Vs. Union of India reported in (1988) 2 SCC

293, All Assam Tea Plantation Security Vs. The State of Assam and Ors. reported in (2003) 1 GLR 233 and those made in this judgment and order.â??

In the impugned Show Cause cum Demand Notice, the authorities have raised a demand upon the petitioner without deciding on the issue as to

whether the writ petitioner being exigible to Service Tax or not. The order dated November 20, 2014 directed the authorities not to take any further

action under the Service Tax Act against the writ petitioner unless the exigibility of the writ petitioner to Service Tax is decided. The authorities have

proceeded through the impugned order to raise a demand which is, in my view, is contrary to the order dated November 20, 2014 as modified by the

order dated January 15, 2016.

In such circumstances, the impugned Show Cause cum Demand Notice is quashed. This order will not prevent the authorities from acting in terms of

an order dated November 20, 2014 passed in W.P. No.48 of 2014 as modified by the order dated January 15, 2016 passed in A.P.O.T. No.159 of

2015. W.P. No.17001(W) of 2016 is disposed of. No order as to costs. Urgent certified Website copy of this order, if applied, be supplied to the

parties, upon compliance of all requisite formalities.

