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(2013) 09 JH CK 0070

In the Jharkhand High Court

Case No : WP (T) No''s. 1261, 1263, 1265, 1270, 1272, 1276, 1284, 1288, 1290 and 1628 of 2013

M/s. Damodar Valley Corporation APPELLANT

Vs

Commissioner of Central Excise and Service Tax, Central Excise and Service Tax Department and Others RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 302 ELT 30 : (2013) 4 JLJR 276 : (2014) 34 STR 169

Hon'ble Judges : Dhirubhai Naranbhai Patel, Acting C.J.;Shree Chandrashekhar, J

Bench : Division Bench

Advocate : Amrita Sinha, for the Appellant; Ratnesh Kumar, for the Respondent

Judgement

Dhirubhai Naranbhai Patel, Actg. C.J.

1. In all these petitions, order in original passed by the Additional Commissioner, Central Excise, Ranchi dated 31st December, 2012, is under challenge. For the reference, Writ Petition (Tax) No. 1290 of 2013 is treated as main matter. Counsel appearing for the petitioner submits that petitioner is service receiver and the respondent No. 3 (in writ petition No. 1290/2013 is service provider). The service tax is to be levied from the service provider and not from the service receiver as per the Finance Act, 1994. Counsel Ms. Amrita Sinha has vehemently submitted that order in original passed by Additional Commissioner, Central Excise, Ranchi dated 31st December, 2012, insofar as it affects the present petitioner deserves to be quashed and set aside mainly for the reasons that the order is travelling beyond the show-cause notice. Secondly, there are observations made by the Additional Commissioner, Central Excise, Ranchi which affects the petitioner. The impugned order which is at Annexure-2 to the memo of writ petition, has been passed without giving any notice to the petitioner, nor any opportunity of being heard has been given to the petitioner and therefore, the observations in the order in original which read as under deserves to be

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quashed and set aside:--

ii. On DVC, CTPS, as they are fully involved in receiving above referred services from the Noticee & in turn owe the Service Tax dues to the Noticee, to compensate the entire financial loss including interest and penalty to the Noticee, on account of above order, as such loss arose on account of serious mistake and carelessness of DVC, CTPS. Had they paid the Service Tax amount timely to the Noticee, this situation could be avoided.

(iii) Preventive wing and arrear recovery wing of the Commissionerate of Central Excise and Service Tax, Ranchi are directed to take corrective and punitive measures on the DVC, CTPS, in case of non-compliance of this Order & in order to ensure the non-recurrence of such incidents in future.

2. It is also submitted by the counsel for the petitioners in all these writ petitions that the observations of the order in original is against the provision of law and in gross violation of principle of natural justice and hence violative of Article 14 of the Constitution of India and therefore, the aforesaid paragraphs of the order in original passed by the Additional Commissioner, Central Excise, Ranchi dated 31st December, 2012 may kindly be quashed and set aside.

3. We have heard counsel appearing on behalf of respondent Nos. 1-2 & 4, who has submitted that it is true that no notice has been given to the petitioner nor any opportunity of being heard has been given to the petitioner nonetheless the observations made in the operative part of the order at (ii) and (iii) would not affect the petitioner as notice was given to the service provider i.e. to the private respondent No. 3 in all these writ petitions and they are providing service to present petitioner. In fact, nothing is decided against the present petitioner, hence all these petitions are not tenable in law and therefore, this petition may not be entertained by this Court.

4. We have heard the counsel appearing for the private respondent No. 3, in these writ petitions. He is service provider to the Damodar Valley Corporation who is the present petitioner.

5. Counsel appearing for the respondent No. 3 has contended the case on merit and it is submitted that the order passed by the Additional Commissioner, Central Excise, Ranchi has been wrongly passed against the respondent No. 3 and they are not liable to pay any service tax under the Finance Act, 1994.

6. Having heard the counsel for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the following paragraphs from the order of Additional Commissioner, Central Excise, Ranchi:--

ii. On DVC, CTPS, as they are fully involved in receiving above referred services from the Noticee & in turn owe the Service Tax dues to the Noticee, to compensate the entire financial loss including interest and penalty to the Noticee, on account of above order, as such loss arose on account of serious mistake and carelessness of DVC, CTPS. Had they paid the Service Tax amount timely to the

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Noticee, this situation could be avoided.

(iii) Preventive wing and arrear recovery wing of the Commissionerate of Central Excise and Service Tax, Ranchi are directed to take corrective and punitive measures on the DVC, CTPS, in case of non-compliance of this Order & in order to ensure the non-recurrence of such incidents in future.

for the following facts and reasons:--

(i) The aforesaid observations and directions are vital in nature and it affects the rights of present petitioner and these observations could not have been made by the respondent No. 4 without giving any notice to the present petitioner. In the present case, the Additional Commissioner, Central Excise, Ranchi has not given any notice to the present petitioner and that is admitted in the impugned order [that is in internal page No. 10 of the impugned order running page 62 of the Writ Petition (Tax) No. 1290 of 2013].

(ii) Admittedly no opportunity of being heard has been given to the petitioner and without giving any opportunity of being heard, the aforesaid observations have been passed in the impugned order against this petitioner by Additional Commissioner, Central Excise, Ranchi and therefore, the said observation is in gross violation of principle of natural justice.

(iii) It is ought to have been kept in mind by the Additional Commissioner, Central Excise, Ranchi that if any observation is made against any party which may impose financial liability then at least notice should have been given and opportunity of being heard should have been given to the concerned party.

Looking to the order passed by the Additional Commissioner, Central Excise, Ranchi, we find that it has travelled beyond show-cause notice given to the service provider i.e. respondent No. 3. The present petitioner is service receiver. Thus, the directions and observations made by the Additional Commissioner, Central Excise, Ranchi as stated hereinabove, are hereby quashed and set aside because the same are observed in the impugned order without giving any notice and without giving any opportunity of being heard and the said directions are travelling beyond the show-cause notice. All these writ petitions (Tax) are hereby allowed and the aforesaid paragraphs insofar as these affect the petitioner, are hereby quashed and set aside.

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