(2009) 10 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Paramount Impex Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Finance Act, 1994 — Section 66A

Citation : (2010) 17 STR 234

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant petition is directed against a show cause notice dated 19-6-2009 (P. 10). The show cause notice points out that petitioner has paid Rs. 3,81,33,750/- to Overseas Agents during the period 9-7-2004 to 31.3.2008 and Service Tax on the aforesaid amount amounting to Rs. 41,73,003/- along with Education Cess is liable to be recovered from the petitioner which has not been paid. The petitioner has also challenged the constitutional validity of Rule 2(1)(d)(iv) of Service Tax Rules, 1994 (for brevity ''the Rules'') as amended from time to time and Explanation to Section 65(105) along with Section 66A of Chapter V of the Finance Act, 1994. The petitioner has also attacked the Taxation of Service (Provided from Outside India and Received in India) Rules, 2006 being ultra vires, arbitrary, absurd and inconsistent with the Finance Act, 1994. In that regard reliance has been placed on a Division Bench judgment of the Bombay High Court in the case of Indian Exporters Grievances FO v. UOI (P.6) (sic) Indian National Shipowners Association Vs. Union of India (UOI), claiming that Rule 2(1)(d)(iv) of the Rules has been declared to be invalid.

2. We have heard learned Counsel at some length and find that the writ petition cannot be entertained at this stage because merely a show cause notice has been challenged. Firstly, the show cause notice cannot be considered to be without jurisdiction. Moreover, the petitioner has not even filed reply by pleading the Division Bench judgment in Indian Exporters Grievances case (supra) (sic)

which has declared the provisions of Rule 2(1)(d)(iv) of the Rules as invalid. It is pertinent to notice that the Division Bench has found the rule to be valid from 18-4-2006. The period involving the case of the petitioner as per the show cause notice which has not been disputed during the course of arguments is from 9-7-2004 to 31-12-2008. It is obvious that a part of the demand in any case would be valid. The aforesaid issue could have been raised before the departmental authorities and the period prior to 18-4-2006 might have been considered in the light of the Division Bench judgment in Indian Exporters Grievances case (supra)(sic). Therefore, we are not inclined to entertain the petition at this stage especially when the remedy of filing reply to the show cause notice before the authorities concerned has not yet been availed. It cannot be presumed that the authorities under the Act would not consider the issue raised before us. Therefore, the petitioner is relegated to the remedy of show cause notice by filing reply. It is needless to observe that the respondent authorities would pass a speaking order by taking into consideration the issue which might be raised. We further make it clear that the question of validity of the rule has been left open and the petitioner shall be at liberty to raise that issue if such a necessity arises.

3. The writ petition stands disposed of in the above terms.

