(2012) 03 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2332 of 2012

Saryu Kamal Builders APPELLANT

Vs

Astt./Dy. Commr. Service Tax Division, Jaipur RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Citation : (2013) 289 ELT 264

Hon'ble Judges : Arun Mishra, C.J;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : M.L. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Narendra Kumar Jain-I, J.—Heard learned counsel for the petitioner. Petitioner has preferred this writ petition challenging the notice issued by the respondent No. 1, published in Daily News Paper ''Dainik Bhaskar'' dated 28-1-2012 (Annexure-8), whereby it was directed that if amount of service tax/penalty/ interest is pending against any party/service provider, the same may be deposited within a period of seven days, failing which an action for recovery of tax will be initiated under the provisions of Finance Act, 1994, like attachment of movable or immovable property etc.

2. The facts of the case, in brief, are that a notice to show cause was issued to petitioner by the Assistant Commissioner, Service Tax Division, Jaipur on 24-10-2009 for not paying the amount of service tax of Rs. 1,64,499/- for the period from 10-9-2004 to 31-3-2008. Finally, an order was passed on 18-1-2011, whereby a demand of service tax was raised against the petitioner for the aforesaid amount. Being aggrieved with the same, petitioner preferred an appeal, which was dismissed by the Commissioner of Appeals vide order dated 28-9-2011. Thereafter, petitioner preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi along with an application for stay and the next date fixed in the case for hearing on stay application by the Tribunal

is 2-4-2012.

3. Submission of the learned counsel for petitioner is that petitioner has already preferred an appeal along stay application and the next date fixed by the Tribunal for hearing on stay application is 2-4-2012, but in the meantime, notice has been issued on 28-1-2012, therefore, it will be appropriate to stay the recovery of amount till the stay application is heard by the Tribunal, otherwise property of the petitioner will be attached and auctioned. In support of his submissions, he referred the judgment of Division Bench of this Court at Principal Seat at Jodhpur in Shree Cement Ltd. Vs. Union of India (UOI) and Others, .

4. We have considered the submissions of learned counsel for petitioner and examined the documents, annexed with the writ petition, including impugned notice, published in Daily News Paper ''Dainik Bhaskar'' dated 28-1-2012, wherein name of petitioner finds place at S. No. 46.

5. From the notice Annexure-8, it is clear that it is only a general notice issued to all parties/service providers to deposit the amount of due service tax/penalty/ interest. The adjudicating authority has passed an order against petitioner demanding a sum of Rs. 1,64,499/- along with interest and penalty. The said order has been upheld by the Commissioner of Appeals. Petitioner has further filed an appeal before the Appellate Tribunal along with stay application and next date fixed by the Tribunal is 2-4-2012. A period of seven days was given in the notice dated 28-1-2012, but no property of petitioner has been attached and put to an auction. The writ petition was filed on 16-2-2012. The matter is already fixed before the Tribunal on 2-4-2012. If petitioner has any urgency in the matter, then a prayer should have been made before the Appellate Tribunal itself for early hearing of the stay application, instead of filing the present writ petition before this Court.

6. In Shree Cement Ltd. v. Union of India (supra), the Division Bench of this Court considered the Board''s Circular dated 2-3-1990 to the effect that recovery of Government dues by coercive measures is forbidden during pendency of the stay application before the appellate authority [Commissioner (Appeals), CEGAT etc.]. This Court held that Circular dated 2-3-1990 binds all Central Excise Officers to stay their hands off resorting to coercive measures of recovery during the pendency of stay petition before the CEGAT. So far as present case is concerned, it is not a case of petitioner that the said Circular dated 2-3-1990 has been brought to the notice of respondents. Further, the petitioner has neither placed on record any copy of attachment order of its movable or immovable property, nor any notice for auction thereof. In these circumstances, we find that the said judgment is distinguishable on facts.

7. Since 2-4-2012 has already been fixed in the case by the Tribunal for hearing of stay application, if the petitioner still feels that there is an urgency in the matter and his property is going to be attached, then it should make a prayer before the Tribunal for early hearing of its stay application. In view of above, we

do not find any merit in this writ petition and the same is, accordingly, dismissed in limine.

