(2010) 11 MAD CK 0019

In the Madras High Court

Case No : Writ Petition (MD) No. 9441 of 2007 and M.P. (MD) No. 1 of 2007

Teddy Exports APPELLANT

Vs

Jt. Commissioner of C. Ex. RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:
Finance Act, 1994 — Section 73(1)

Citation : (2011) 21 STR 226

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : S. Renganathan, for the Appellant; B. Vijay Karthikeyan, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—Challenge in this writ petition is to the show cause notice issued by the Commissioner of Central Excise, Madurai in C

No. V/ST/15/110/2007-Adjn dated 23-10-2007 under Show Cause Notice No. 5/2007 (ST) OR No. 15/2006 dated 27-10-2006, calling upon

the Petitioner to show cause as to why the service tax on the educational cess payable for the period between 1-7-2003 and 30-11-2006 as

detailed in the Annexure-I should not be demanded from the Petitioner u/s 73(1) of the Finance Act, 1994.

2. The core question involved in this writ petition is as to whether such service tax could be levied in respect of service rendered outside the

Territory of India. When a similar question came up before this Court in writ petitions in W.P. (MD) Nos. 9124 of 2007 and 7511 of 2008 (Hind

Matches Pvt. Ltd. v. The Additional Commissioner of Central Excise W.P. (MD) Nos. 9124 of 2007 and 7511 of 2008), by order dated 25-10-

2010, the learned Single Judge, having analysed the law on the subject and having analysed the Circular issued by the Government of India,

Ministry of Finance, Department of Revenue dated 30-6-2010 in F. No. 275/7/2010-CX. 8A, has ultimately held as follows:

4. In the light of the stand taken by the Respondents and also it is admitted by the learned Central Government Senior Standing Counsel that the

liability of the Petitioners has to be worked out only from 18-4-2006, hence both the writ petitions are allowed to the extent indicated above. No

costs. Consequently, connected miscellaneous petitions are closed.

3. In view of the above said order, the learned Counsel for the Petitioner would submit that the Petitioner would be liable for payment of service

taxes only from 18-4-2005 in respect of the services rendered for outside the Indian territory.

4. On the other hand, the learned Counsel appearing for the Respondents would submit that the above said order has got no application to the

facts of this case. He would submit that in the above said order, admittedly, the entire service was rendered and received only outside the territory

of India, whereas in the case on hand, according to the materials available on record, the service was rendered outside India and received within

the territory of India. According to him, such service tax is leviable from 1-1-2005. But, the learned Counsel also raised a preliminary objection

regarding the maintainability of this writ petition. According to him, what is under challenge is only a show cause notice and for that, the Petitioner

can very well submit his explanation. When there is such an efficacious alternative remedy available to the Petitioner, according to the counsel for

the Respondents, this writ petition is not maintainable and the same is liable to be dismissed.

5. I have considered the rival submissions.

6. Since the question of maintainability is raised, I deem it proper to deal with the same at first. Admittedly, as pointed out by the learned Counsel

for the Petitioner what is under challenge is only a show cause notice, calling upon the Petitioner to show cause as to why the service tax should not

be levied against him. But the Petitioner has not chosen to give any reply to the said show cause notice, instead rushed to this Court with this writ

petition. In my considered opinion, when the Petitioner has got alternative remedy, which is efficacious, the writ petition cannot be entertained at

all. The Petitioner can very well submit his explanation and if any adverse order is passed, he can very well work out his remedy in the manner

known to law. In respect of the question as to whether service tax is leviable, it is for the Respondent to consider as to how and why the service

rendered outside, but received in India is also liable for tax. If any such plea is raised in the explanation, the Respondent shall consider the same

strictly in accordance with law.

7. In view of the above, this writ petition is not maintainable. Without expressing any opinion regarding the merits of the petition, this writ petition is

dismissed, however, with liberty to the Petitioner to submit his explanation to the impugned show cause notice within a period of four weeks from

the date of receipt of a copy of this order, and if any such explanation is submitted, the Respondents shall pass appropriate orders on merits and in

accordance with law, after affording sufficient opportunity to the Petitioner within a period of eight weeks thereafter.

