

Court No. - 37

Case :- WRIT TAX No. - 944 of 2015

Petitioner :- Prosper Build Home Pvt. Ltd. And Another

Respondent :- Union Of India And 2 Ors.

Counsel for Petitioner :- Ved Byas Mishra

Counsel for Respondent :- Amit Mahajan

Hon'ble Tarun Agarwala,J.

Hon'ble Vinod Kumar Misra,J.

The petitioner has filed the present writ petition seeking a writ of mandamus commanding the respondents to assess the correct liability of service tax against the petitioner.

The facts leading to the filing of the writ petition is that the petitioner provides labour in the construction of buildings to various builders under a works contract.

It is alleged that under the agreement, the petitioner is liable to pay service tax w.e.f. 01.07.2012. It transpires that the Service Tax Department made an investigation and recorded the statement of Dharmendra Singh Chauhan on 18.03.2015 and the statement of Suresh Yadav, the petitioner on 21.04.2015. In their statements, the petitioners admit that they are liable to pay service tax. Based on this statement, the petitioner was arrested on 22.04.2015, for non-deposit of service tax, under Section 89 (1) (d) of the Finance Act, 1994. The petitioner was, subsequently, enlarged on bail from the court of the Chief Judicial Magistrate subject to certain conditions, namely, with regard to deposit of service tax. The petitioner filed a time extension application, which was rejected and, subsequently, the petitioner filed an application under Section 482 Cr.P.C. before the High Court, in which, an interim order dated 05.10.2015, was passed directing the petitioner to pay 25% of the entire outstanding.

The petitioner contends that the interim order has been complied and 25% of the entire outstanding has been deposited, which fact has been disputed by the learned counsel for the respondents.

The petitioner has now filed the present writ petition praying that based on the admission made by the petitioner, the respondents are forcing the petitioner to pay the amount of service tax without there being any formal adjudication under Section 73 of the Finance Act. The petitioner had made a statement that he is liable to pay service tax but now contends

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that under legal advice, no service tax is liable to be paid on the material supplied, free of cost, by the petitioner, but the said objection through representation is not being addressed by the authority and, on the other hand, coercive measures are being adopted to recover the amount. Consequently, the writ petition.

Shri Amit Mahajan, on behalf of the Department, has filed a short-counter affidavit. A perusal of the counter affidavit and as per the oral statement of the learned counsel for the respondents, we find that the matter is still under investigation and the process to issue a notice for making an assessment under the Act is under contemplation. The upshot is, that at the present moment, there is no assessment order against the petitioner.

Consequently, we are of the opinion that the petitioner cannot be forced to pay the amount as per the statement recorded. In the event, the department finds that the correct amount of service tax has not been deposited, it would be open to the respondents to initiate appropriate proceedings under the Act and make an order of adjudication assessing the service tax pursuant to which recovery of the service tax can be made. In the event, the petitioner has misused or has not complied the terms of the bail order or of the interim order passed in the miscellaneous application under Section 482 Cr.P.C., it would be open to the respondents to move an application for cancellation of the bail application and for vacation of the interim order passed by the High Court.

With the aforesaid observations, the writ petition is disposed of.

Order Date :- 24.2.2016

m.a.

(Vinod Kumar Misra, J.)

(Tarun Agarwala, J.)