

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2103 OF 2021

Amrish Rameshchandra Shah

..Petitioner

Versus

The Union of India & Ors.

..Respondents

Mr. Prakash Shah a/w Mr. Prasad Paranjape, Mr. Mihir Mehta & Mr. Jas Sanghavi i/by PDS Legal, for the Petitioner.

Mr. J. B. Mishra, for the Respondents.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : 27th JANUARY, 2021

P.C.

1. Heard Mr. Prakash Shah, learned counsel for the petitioner.
2. Challenge made in this Writ Petition is to the show cause-cum-demand notice issued by respondent No.3 on 30.12.2020 to the petitioner.
3. On a query by the Court as to why petitioner has not filed reply to the show-cause notice and instead has invoked writ jurisdiction of this Court, learned counsel for the petitioner submits that the impugned show cause-cum-demand notice has been issued without jurisdiction. His contention is that petitioner is a Chartered Accountant by profession and is a partner in a firm. The firm had filed income tax return and has paid service tax. Based on the declaration made in the income tax return, a view has been taken by respondent No.3 that the remuneration received by

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the petitioner from the firm is subject to service tax and since this has not been paid, impugned show cause-cum-demand notice has been issued.

4. Learned counsel for the petitioner has referred to a decision of the Central Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in *Alpa Management Consultants P. Ltd. Vs. Commissioner of Service Tax, 2007(6) S.T.R. 181*, where CESTAT has held that service tax cannot be recovered based on the returns shown in the income tax returns. He further submits that appeal filed by the service tax department before the Karnataka High Court was dismissed on the ground of maintainability whereafter service tax department approached the Supreme Court. Supreme Court dismissed the civil appeal filed by the Commissioner of Service Tax.

5. Issue notice.

6. Mr. J. B. Mishra, learned counsel waives notice for all the respondents.

7. Let the respondents file their reply affidavit by the next date.

8. In the meanwhile, there shall be stay of the impugned show cause-cum-demand notice dated 30.12.2020.

9. Stand over to 15.03.2021.

MILIND N. JADHAV, J

UJJAL BHUYAN, J

BGP.

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