

(2009) 03 KL CK 0034

High Court Of Kerala

Case No: Writ Petition (C) No. 7376 of 2009 (N)

M.K. Thaha

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: March 12, 2009

Acts Referred:

- Finance Act, 1994 - Section 65(105)

Citation: (2009) 15 STR 145 : (2009) 22 STT 456

Hon'ble Judges: K.M. Joseph, J

Bench: Single Bench

Advocate: Joseph Vellapally, for the Appellant; P. Gopinath Menon, Senior Standing Counsel, for the Respondent

Judgement

K.M. Joseph, J.

Petitioner challenges Exts. P2, P4 and P6 notices. Briefly put, the case of the petitioner is as follows:

2. Petitioner is a facilitator for Hajj pilgrims in respect of the quota allotted by Government of India each year. Ext. P2 is the notice issued by the Superintendent calling up on the petitioner to provide certain details with supporting documents, copy of audited balance sheet etc. It is stated in Ext. P2 that it is understood that the petitioner is operating outbound tours/pilgrimages and petitioner is not paying service tax. According to the petitioner, he is not a tour operator. The relevant statutory provision is Section 65(105)(n). As per the section "taxable service" means any service provided or to be provided to any person by a tour operator in relation to a tour. According to the petitioner, petitioner is only a facilitator for Hajj and Umrah pilgrims to perform obligatory Hajj and Umrah in the Holy cities of Mecca and Medina and also at Mina, Arafah, Muzdalifa etc. Hajj is obligatory to all muslims, men and women, if he is financially sound and physically fit, it is stated. Petitioner submitted Ext. P3 brief note on the nature of operation. By Ext. P4, petitioner was

called upon to furnish details. Ext. P6 is again calling upon the petitioner to furnish further details.

3. I heard Sri. Joseph Vellappally, learned senior counsel for the petitioner and Sri. P. Gopinath Menon, senior standing counsel for the department. Learned senior counsel for the petitioner points out that even the issuance of notice in respect of tours which are abroad is without jurisdiction. He relies on Exts. P7 and P8 to contend that services rendered abroad are not taxable. Sri. Gopinatha Menon on the other hand points out that Exts. P2, P4 and P6 can only be treated as notices calling for information and the officer will certainly consider the matter and take a decision in accordance with law. In such circumstances, petitioner may produce any further documents which are to be produced within one month from today and the officer will consider the documents, Ext. P3 brief note, Ext. P7 and Ext. P8 circulars and any subsequent instructions which may have been issued and take a decision in the matter in accordance with law. As submitted by the learned Counsel for the respondent the officer may take a decision to drop the proceedings if such a view is warranted on consideration of the matter. On the other hand, if the officer feels that the petitioner is liable, the officer will issue show cause notice to the petitioner before taking a decision in the matter in accordance with law.

The writ petition is disposed of as above.