

(2014) 04 AP CK 0011

Andhra Pradesh High Court

Case No: Writ Petition No. 13088 of 2014

Federation of Andhra Pradesh
Chambers of Commerce and
Industry

APPELLANT

Vs

C.C. and Central Excise

RESPONDENT

Date of Decision: April 28, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Finance Act, 1994 - Section 73, 83A, 85, 86

Citation: (2014) 36 STR 490

Hon'ble Judges: Kalyan Jyoti Sengupta, C.J; Sanjay Kumar, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Kalyan Jyoti Sengupta, C.J.

This writ petition has been filed for the following reliefs:

"For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to pass an order or orders or direction more particularly one in the nature of a writ of mandamus declaring the action of respondents 1 to 3 in imposing and demanding service tax from the petitioner on the service of "issuance of Country of Origin Certificates" to its members during the period 2006-07 to 2007-08, without issuance of show cause notice and adjudicating the liability by passing Order in Original as arbitrary, illegal, in violation of principles of natural justice and contrary to the provision of the Finance Act, 1994 and rules made thereunder besides violation of the petitioner's rights guaranteed under Article 14 of the Constitution of India and consequently set-aside the letter dated 19-8-2013 issued by the 2nd respondent and further direct respondents 1 to 3 to refund Rs. 9,96,698/- paid by the petitioner under protest towards the disputed

service tax by setting aside the Order-in-Original No. 193/2013-(Service Tax-R), dated 18-12-2013 passed by the 2nd respondent and confirmed by the 4th respondent vide Order-in-Appeal No. 17/2014(H-II) ST, dated 28-2-2014."

It will appear from close scrutiny of the aforesaid reliefs sought for that they are in two limbs. One limb is for a declaration that demand of service tax for the period 2006-07 and 2007-08 without issuance of show cause notice and adjudicating the liability by passing order is arbitrary and illegal. Another limb of the prayer is so to say for quashing and setting aside letter dated 19-8-2013, order of the second respondent dated 18-12-2013 and order, dated 28-2-2014 passed by the 4th respondent-appellate authority. While taking note of aforesaid prayer portion of the writ petition, fact narrated in the petition does not appear to have correlation. Gist of the fact appears to be as follows. The petitioner before us paid the service tax amounting to Rs. 9,96,698/- for the assessment years 2006-07 and 2007-08 with protest made by a letter addressed by it. The second respondent authority in his reply stated that the payment cannot be made under protest and asserted that it is the payment deemed to have been made against the liability. When the writ petitioner has approached the appropriate authority claiming refund of the amount and calling upon adjudication that the demand was not made under the law, the second respondent after hearing and recording facts, passed order, dated 18-12-2013. Thereafter, appeal was taken and dismissed by the Commissioner with reason. Now, the petitioner has said that as show cause notice was not issued, consequently without any proceedings being initiated, aforesaid two orders are passed, hence entire exercise is nullity.

2. In the aforesaid factual position, the writ petitioner wants to invoke extraordinary jurisdiction under Article 226 of the Constitution of India. The learned counsel for the petitioner when questioned by the Court, as to whether there is a remedy by way of appeal to the Tribunal under the statute, he argues that firstly it is a case of violation of principles of natural justice as show cause notice was not issued and secondly, it is not an order passed under the provisions of law.

3. In the context of the aforesaid submission, only question for decision is, whether there has been any alternative remedy, contrary to what has been stated by the writ petitioner in paragraph 10 that the petitioner has no other alternative remedy except to approach this Court under Article 226 of the Constitution of India.

4. We have to examine the appeal provision under Section 86 of the Finance Act, 1994 which has been adopted in this subject matter. The same is set out hereunder:

"86. Appeals to Appellate Tribunal. - (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under Section 73 Section 83A, or an order passed by a commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order."

5. We find the Commissioner has taken decision undisputedly. The petitioner preferred appeal therefrom to the appellate Commissioner, who is the first appellate authority. We have examined the orders of both the authorities. We are of the view that the matter has been decided by them rightly or wrongly. So, it is an order as defined under Section 86 of the Finance Act, 1994. Therefore, the statement made in paragraph 10 is absolutely incorrect and we hold so without any hesitation.

6. Hence, the writ petition is dismissed on the ground of existence of alternative remedy. Since the matter has been argued for two days, not only on the point of alternative remedy but on merit, wasting the time of the Court in spite of indication being given of the matter to be argued on the plea of alternative remedy, we thought it fit to award costs of Rs. 2,000/- (Rupees Two thousand only) to be paid by the petitioner to the Andhra Pradesh State Legal Services Authority. However, the writ petitioner is given liberty to approach appropriate forum in accordance with law as indicated above. Consequently, miscellaneous petitions, if any pending, shall stand dismissed.