Nila Engineering Contractors Vs. Assistant Commissioner of Central Excise

Nila Engineering Contractors Vs. Assistant Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/1169539

Court : Chennai

Decided On : Jun-30-2014

Judge : B.Rajendran

Appellant : Nila Engineering Contractors

Respondent : Assistant Commissioner of Central Excise

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

30. 06.2014 CORAM THE HONOURABLE MR.JUSTICE B.RAJENDRAN W.P.No.15276 of 2014 and M.P.No.1 of 2014 M/s.Nila Engineering Contractors rep. by its Managing Partner Venkatesan, No.Y-210, Block No.29, Neyveli-607 807. ... Petitioner Vs.

1. The Assistant Commissioner of Central Excise, 1, Vallalar Nagar, Manjakuppam, Cuddalore-607 00q.

2. The Chief General Manager (Finance), Corporate Office, Neyveli Lignite Corporation, Neyveli. ... Respondents Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the Order in Original No.48/2010-ST dated 19.3.2010 passed by the 1st respondent and the consequential Notice of demand issued under Section 87(b)(i) of the Finance Act, 1994 in C.No.V/16/70/09-ST dated 27.9.2011 and quash the same as violative of principles of natural justice,

illegal, arbitrary, unreasonable and without authority of law. For petitioner : Mr.K.Jayachandran For 1st respondent : Mr.S.Thirumavalavan, Senior Standing Counsel

ORDER

The Writ Petition has been filed seeking to quash the order dated 19.3.2010 passed by the 1st respondent and the consequential notice of demand dated 27.9.2014.

2. The case of the petitioner is that their lands have been acquired by the Neyveli Lignite Corporation and for the same, the NLC management has given some contractual job to the members of the family of the farmers whose lands were acquired. Since the work given by NLC was based on compassionate ground, NLC management itself will pay any taxes due in such nature of work granted to the petitioners. Likewise, the petitioner had done the work on contract basis during the years 2006-2007 and 2007-2008. Thereafter, he was given work only during 2009-2013. While so, the bills submitted by the petitioner for the work done have not been paid and the amount had been withdrawn for the reason that the petitioner had not paid the service tax arrears pertaining to the period from 2006-2007 and 2007-2008. In this regard, when the petitioner approached the 1st respondent, he was informed that a show cause notice was served on them on 30.3.2009 and it also came to light that the 1st respondent has also sent garnishee proceedings to the 2nd respondent to recover the arrears. But, according to the petitioner, they have not received any show cause notice and the same has been sent to a wrong address. Hence, the present Writ Petition.

3. Learned Counsel for the petitioner would contend that though the petitioner has obtained a Certificate of Registration under Service Tax implicating their address as M/s.Nila Engineering Contractors, Y-210, Block No.29, Neyveli, Cuddalore District, on 4.5.2009 itself, no show cause notice has been served on the said address. Hence, according to the learned Counsel for the petitioner, the same has to be set aside and consequently, the notice of demand dated 27.9.2011 is per se illegal, barred by limitation and liable to be dismissed by allowing the present Writ Petition.

4. Mr.S.Thirumavazhavan, learned Senior Standing Counsel appearing for the 1st respondent producing the original records would submit that the Show Cause notice was received by the assessee in person and subsequent intimations dated 22.7.2009, 18.12.2009 and 11.2.2010 were depatched to the address M/s.Nila Engineering Contractors, Y-131 Block No.29, Neyveli. Similarly, the order in Original Order No.48/2010 dated 19.3.2010 was also despatched to the same address and the the same was acknowledged by the petitioner. The learned Senior Standing Counsel would further submit that though starting from show cause notice, all other communications were sent to the wrong address, the same have been received and acknowledged by the petitioner with their rubber stamp impression. Therefore, according to the learned Senior Standing Counsel for the 1st respondent, the present Writ Petition has to be dismissed.

5. Heard both sides and I have also perused the materials available on record including the original file produced by the learned Senior Standing Counsel for the 1st respondent and by consent, the Writ Petition itself is taken up for disposal.

6. The petitioner challenges the Show Cause Notice dated 19.3.2010 issued by the 1st respondent and the consequential Notice of Demand dated 27.9.2011 mainly on the ground that they have not received the said notices and they have been despatched to different address and they came to know about the same only in the first week of May, when the 2nd respondent declined to pay the amount for the work done by them. But the said contention was opposed by the 1st respondent.

7. In this regard, the learned Senior Standing Counsel for the 1st respondent has produced the original file of the 1st respondent. A perusal of the same would reveal that firstly, the Show Cause notice dated 30.3.2009 was issued to the petitioner by R.P.A.D. on that date itself to the address M/s.Nila Engineering Contractors, Y131 Block 29, Neyveli-607 807 and though the address was mentioned wrongly, the same was acknowledged by the petitioner with Rubber Stamp on 31.3.2009 itself. Secondly, a letter dated 22.7.2009 sent by the Superintendent (Technical), Cuddalore was acknowledged by the petitioner on 28.7.2009. Thirdly, the letter dated 9.11.2009 of the Superintendent (ST Cell),

Cuddalore intimating the dates of personal hearing and calling for certain documents was acknowledged by the petitioner on 10.11.2009 itself. Likewise, the letter dated 18.12.2009 addressed to the petitioner was acknowledged by them on 26.12.2009 and the letters dated 11.2.2010 and 19.3.2010 have been acknowledged by the petitioner on 13.2.2010 and 29.3.2010 respectively. Thereafter, it appears that the copy of the Notice of Demand dated 27.9.2011 issued by the ACCE, Cuddalore to the Chief General Manager (Finance), M/s.Neyveli Lignite Corporation, Neyveli sent to the petitioner was only returned undelivered by the postal authorities with an endorsement dt.1.10.2011 left. Therefore, it is crystal clear that though the address of the petitioner has been mentioned wrongly in all the correspondence, they have been duly acknowledged by the petitioner with signature and rubber stamp. Further, it appears that the petitioner themselves have written a letter to the department on 2.5.2014 stating that they are prepared and willing to deposit the necessary service tax within a given time. Therefore, nothing more need to be added.

8. Now, the learned Counsel for the petitioner would submit that the petitioner is prepared to pay the service tax within a period that may be fixed by this Court and would request to deduct the amount already withheld by the 2nd respondent.

9. Considering the facts and circumstances, the petitioner is directed to remit the service tax for the period from 2006-2007 and 2007-2008 to the 1st respondent within a period of two months from the date of receipt of a copy of this Order. So far as the prayer to deduct the amount already withheld by the 2nd respondent is concerned, it is open to the 1st respondent to address the Neyveli Lignite Corporation in this regard.

9. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed. 30.06.2014 Internet :Yes/No tsi To 1. The Assistant Commissioner of Central Excise, 1, Vallalar Nagar, Manjakuppam, Cuddalore-607 00q.

2. The Chief General Manager (Finance), Corporate Office, Neyveli Lignite Corporation, Neyveli. B.RAJENDRAN,J tsi W.P No.15276 of 2014 30.06.2014