IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2019

BEFORE

THE HON'BLE MRS. JUSTICE S.SUJATHA

WRIT PETITION NO.56374 OF 2018 (T-RES)

Between:

M/s. Quantium Mail Logistics Solutions
(India) Private Limited,
Unit No.C-6, Plot No.FII-12/15
Opp. SEEPZ Main Gate No.1,
Andheri East, Mumbai – 400 093
Represented by its Director
Mr. Pradeep Kumar Narsaria. …Petitioner

(By Sri. Shivadass, Sr. Advocate for
Smt. Akshaya H.M., Advocate)

And:

1. The Assistant Commissioner of Central
Tax, South Division-2,
Bengaluru South Commissionerate
II Floor, BMTC Bus Stand,
Banashankari,
Bengaluru – 560 070.

2. The Superintendent of Central Tax
Range B, South Division -2,
Bengaluru South Commissionerate,
II Floor, BMTC Bus Stand,
Banashankari,
Bengaluru – 560 070.

3. The Commissioner of Central Tax
Bengaluru South Commissionerate,
Central Revenue Buildings Annex,

Queen's Road, Shivajinagar,
Bengaluru – 560 001.

4. The Deputy Commissioner of Central
Tax (Audit-I)
Audit-I Commissionerate,
II Floor, BMTC Bus Stand,
Banashankari,
Bengaluru – 560 070.

5. The Branch Manager
HDFC Bank,
No.9, Eterna,
Koramangala Industrial Layout,
Koramangala,
Bengaluru – 560 095.

6. The Branch Manager
HSBC Bank,
M.G. Road Branch,
Bengaluru – 560 001. ...Respondents

(By Sri. K.M. Shivayogiswamy, Advocate for R-1 to R-4)

This Writ Petition is filed under Article 226 of the Constitution of India, praying to quash Garnishee orders C.No.IV/16/19/2015 ST-1, Div IV Group XX/1508/16 dated 29.3.2016 issued by respondent No.1 to respondent No.5 vide Annexure-M and the notice of recovery/garnishee order dated 22.05.2018 issued by respondent No.1 bearing No.IV/19/2016-ST-1, Div IV Group XX to respondent No.6 vide Annexure-Z as illegal, arbitrary and abuse/misuse of powers conferred under Section 87 of the Finance Act, 1994 and etc.,

This Writ Petition coming on for Preliminary Hearing this day, the Court made the following:

O R D E R

The petitioner has challenged the garnishee order dated 29.03.2016 issued by respondent No.1 to the respondent No.5 as well as the notice of recovery/garnishee order 22.5.2018 issued by respondent No.1 to respondent No.6 at Annexures-'M' and 'Z' respectively to the writ petition.

2. The petitioner is a private limited company and registered with the Service Tax Commissionerate, Bengaluru. The petitioner was engaged in providing taxable services in the category of 'Mailing List Compilation and Mailing services', 'Courier Agency Services' etc.,

3. The petitioner was filing ST-3 returns periodically, *inter alia* declaring the value of taxable services, service tax payable, service tax paid by them, details of input credit taken and utilized for payment of discharge of service tax liabilities. On audit of the accounts of the petitioner conducted by the audit wing of the department covering the period from April 2012

to March 2014, some discrepancies committed by the petitioner were noticed, objections were raised and the same were communicated to the petitioner. The observations of the audit officers relating to the difference of Rs.38,66,902/- between the total tax payable and the actual amount of tax paid was considered as short payment of service tax and is figured in Sl.No./para 2 of the objections raised by the audit wing.

4. The petitioner had explained that there is no such short payment of service tax as pointed out by the Audit Wing and that they have paid the service tax as assessed by them and adjustment of CENVAT credit. The petitioner had not shown actual amount of tax paid by CENVAT credit in the column meant for service tax paid in the service tax returns and that actual amount paid, utilized for payment of service tax has been declared correctly in page 11 of the same return under the head "CENVAT Credit details'. Subsequently, the Commissioner of Service Tax (Audit), Bengaluru, issued a show cause notice relating to service tax of

Rs.3,81,96,235/- and Rs.2,91,155/- towards wrong availment of CENVAT credit but no demand was raised in respect of short payment of service tax of Rs.38,66,902/-. However, recovery proceedings has been initiated by the Asst. Commissioner of service tax relating to this short payment of service tax of Rs.38,66,902/- by issuing garnishee orders to the bankers. Hence, this writ petition.

5. Learned Senior Counsel Sri. Shivadass, appearing the petitioner reiterating the grounds urged in the writ petition as narrated above, would submit that the garnishee orders impugned are wholly unjustifiable and issued without authority of law.

6. Learned counsel Sri.K.M.Shivayogiswamy for the respondent-Revenue made an endeavour to justify the impugned orders.

7. Section 87 of the Finance Act, 1994 contemplates for recovery of any amount payable due to the Central Government which the Central Government under any of the provisions of Chapter V or

of the Rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned therein. Amount payable by a person is sine qua non for initiating recovery proceedings under the Finance Act, 1994.

8. It is not in dispute that objections were raised by the Audit Wing subsequent to certain discrepancies found in the accounts of the petitioner. Para.2 of the said objections relates to short payment of service tax during the year 2012-2013 amounting to Rs.38,66,902/-. Among six objections raised by the Audit Wing, objection No.6 regarding penalty for ST-3 was admitted and the other objections were contested by the petitioner providing detailed explanation. The discrepancy pointed out by the Audit Wing under para.2 regarding the short payment of service tax amounting to Rs.38,66,902/- was explained by the petitioner that the same was correctly declared in page.11 of the same return under the head 'CENVAT Credit details'. A communication was issued to the petitioner indicating that the objections were not accepted by the audit

group, show cause would be issued in respect of paras.1 to 5. The show cause notice issued on 29.02.2016 relates to paras.1,3,4 and 5 of the objections raised by the Audit Wing and the said notice is yet to be adjudicated. In such circumstances, without issuing the show cause notice to the short payment of service tax of Rs.38,66,902/-, if the explanation of the petitioner is not accepted, initiating recovery proceedings by issuing garnishee order to the bankers cannot be substantiated and is not in conformity with Section 87 of the Finance Act, 1994.

9. For the aforegoing reasons, the writ petition deserves to be allowed. Hence, the following order:

1. The garnishee orders impugned dated 29.03.2016 and 22.05.2018 at Annexures-'M' and 'Z' respectively are quashed.

2. The petitioner shall file reply to the objections raised by the Audit Wing relating to the short payment of service tax of Rs.38,66,902/- within a period of two weeks form the date of receipt of certified copy of the order and on such filing of the reply,

respondent No.1 shall take a decision in the mater in accordance with law.

Writ petition stands disposed of in terms of the above.

Sd/-
JUDGE

MBM/Dvr: