



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.6592 of 2025

Shivananda Ray

....

Petitioner

Mr. M.M. Patnaik, Advocate

-versus-

***Principal Commissioner CGST and
Central Excise. Bhubaneswar and Opp. Parties
Others***

Mr. T.K. Satapathy, Sr. Standing Counsel

CORAM:
HON'BLE THE CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE B. P. ROUTRAY

Order No.

ORDER
07.04.2025

02. 1. Heard Mr. M.M. Patnaik, learned counsel for the Petitioner and Mr. T.K. Satapathy, learned Senior Standing Counsel for the Department.
2. The Petitioner, who is a practicing advocate at Bhubaneswar, has been served with the impugned notice dated 15th April, 2021 demanding service tax amounting Rs.2,14,600/- for the Financial Year 2015-16 in terms of Section 73 of the Finance Act, 1994. This was followed by the notice of recovery dated 28th January, 2025 amounting service tax of Rs.2,14,600/- and penalty of Rs.2,34,600/- plus interest by the Superintendent (ARC), GST and Central Excise, Bhubaneswar-II Division (Annexure-3 & 5 respectively).
3. The Petitioner prays to quash the aforesaid notices with a direction to the Opposite Parties restraining them from such action on their part since he is an individual legal practitioner.



4. The Department (Opposite Parties) have filed their counter stating that the demand-cum-show cause notice under Annexure-3 was issued to the Petitioner under the provisions of Section 73 of the Finance Act, 1994 for non-payment of service tax for he contravened the provisions under Sections 67, 68, 69 and 70 of the Finance Act read with Finance Rules. It is further stated that pursuant to the show cause notice, the Petitioner did not cooperate to the authorities and as such the adjudication process was completed *ex-parte* and order dated 9th August, 2024 (Annexure-A/1) has been passed resulting issuance of recovery order under Annexure-5.

5. The position of law regarding demand of service tax from the practicing lawyers has been settled by order dated 31st March, 2021 of this court passed in WP(C) No.27727 of 2020. A Coordinate Bench of this court has observed that the practicing advocates should not face harassment on account of the Department issuing notices calling upon them to pay service tax / GST. The relevant portion of the order is reproduced below:-

“7. The Court expressed its concern that practicing advocates should not have to face harassment on account of the Department issuing notices calling upon them to pay service tax/GST when they are exempted from doing so, and in the process also having to prove they are practicing advocates. The Commissioner GST is directed to issue clear instructions to all the officers in the GST Commissionerates in Odisha that no notice demanding payment of service tax/GST will be issued to lawyers rendering legal services and falling in the negative list, as far as GST regime is concerned.....”



6. Pursuant to the aforesaid direction of the court dated 31st March, 2021 the Department filed its affidavit enclosing copy of its instruction issued on 9th April, 2021 and 15th April, 2021 reiterating, inter alia, that the services provided by an advocate or a Partnership firm of advocates providing legal services to any person other than a business entity and to a business entity with a turnover up to rupees ten lakhs in the preceding financial year are exempted from levy of service tax. Paragraph 4 to 6 of said instructions as quoted in order dated 22nd April, 2021 of WP(C) No.27727 of 2020 are reproduced below:-

“4. In view of above it is clearly instructed to all the field formations that utmost diligence may be taken while initiating verification against the entities on the basis of third party information, if it is found that income so reflected is on account of provision of exempted service / negative service, no further action under Section 73 of the Finance Act, 1994 may be initiated.

5. Further, it is noticed that in the process of verification, letters were issued to the same entity by the different field formations causing unnecessary hardship to the party supplying the information. So coordination among the field formations may be maintained so that if information is called for by one of the field formation from a particular entity no further enquiry may be initiated against the same entity by the others.

6. The above instructions may be brought to the notice of all the jurisdictional Range Officers of your jurisdiction for strict compliance.”

7. It is true that the Petitioner in the instant case is undisputedly a legal practitioner. He is an individual lawyer practicing at



Bhubaneswar and such averments of the Petitioner are not disputed by the Opposite Parties. It appears from the demand-cum-show cause notice under Annexure-3 that pursuant to third party disclosure, i.e. Income Tax Department, regarding income of the Petitioner such demand for service tax has been made by the Department. Thus, in view of the admitted fact that the Petitioner is a practicing lawyer and the earlier directions issued by this court, as stated above, as well as the instructions issued by the Department the Petitioner is exempted from levy of service tax for such income he derived from his legal service as a Lawyer. Thus, the demand-cum-show cause notice dated 15th April, 2021 (Annexure-3) and the order of recovery dated 28th January, 2025 (Annexure-5) are quashed to the extent it relates to demand of service tax from the income of the Petitioner from his profession as an individual lawyer. At the same time we notice that the Petitioner has disclosed his income from house property in the income tax return for the Assessment Years 2018-19 and 2020-21. So it is open for the Department (Opposite Parties) to proceed in respect of the income from house property, if any applicable, to levy service tax in accordance with law.

8. With aforesaid observation and direction the writ petition is disposed of.

(Harish Tandon)
Chief Justice

(B.P. Routray)
Judge