IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27727 of 2020

Devi Prasad Tripathy .... Petitioner
in person

-versus-

The Principal Commissioner .... Opposite Parties
CGST and Central Excise
Bhubaneswar and others

Mr. P. K. Parhi,
Assistant Solicitor General of India

CORAM:
THE CHIEF JUSTICE
JUSTICE B. P. ROUTRAY

ORDER

Order No. 31.03.2021

04. 1. The Counter affidavit sworn to by the Principal Commissioner, GST and Central Excise, Bhubaneswar Commissionerate on behalf of Opposite Party Nos.1 to 7 is produced in Court today, which is taken on record.

2. It is stated in the said affidavit that "after receiving information from Devi Prasad Tripathy having PAN as being an individual advocate practicing in the Hon'ble High Court of Odisha", further proceedings against him are dropped.

3. What the Court is concerned about is the deponent insisting that the Petitioner should have submitted "documentary evidence to prove his claim that he is a practicing individual lawyer and does not come under the provision of GST or service tax."

4. A reference is made to a Notification dated 20th June 2012, in terms of which service tax liability of an individual

advocate is Nil for legal services rendered to any of business entities located in the taxable territory. However, even for this, the Department appears to insist that the burden to prove it lies on the Petitioner. The counter affidavit filed acknowledges that a similar notice was issued to the Petitioner in 2017 to which he replied, pointing out how he was not liable to pay any service tax.

5. Mr. P. K. Parhi, learned Assistant Solicitor General of India, has fairly admitted that no notice in the first instance ought to have been issued to the Petitioner, who is a practising advocate. However, when specifically asked whether the clear instructions have been issued by the Department to all the officers involved in the enforcement of the GST regime that practising advocates should not be issued notices, he sought time for instructions.

6. During the hearing, certain other advocates present in the Court stated that they too have received such notices. It appears that despite knowing fully well that advocates are not liable to pay service tax or GST, notices continue to be issued to them by the GST Commissionerate.

7. The Court expresses its concern that practising 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 practising 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. Copies of such instructions be placed before the Court on the next date.

8. List on 22nd April, 2021.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge