In the High Court of Judicature at Madras

Dated: 28.04.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice T.S.SIVAGNANAM

Writ Petition Nos. 26181 and 26182 of 2014

M/s. Aviation Express
rep. by its Sole Proprietor
Mr. V. Krishnamoorthy
New No.66 (Old No.142)
Eldams Road, Teynampet
Chennai - 600 018. .. Petitioner in both cases

vs.

1. The Union of India
Ministry of Finance
Department of Revenue
North Block, New Delhi 110 001.

2. The Commissioner of Service Tax
Newry Towers, No.2054-I
2nd Avenue, Fourth Floor
Anna Nagar, Chennai-600 040. .. Respondents in both cases

PRAYER: Writ Petition No. 26181 of 2014 filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare deletion of "contract carriage" service for transportation of passengers from Mega Exemption Notification No.25/2012-ST, dated 20th June, 2012, vide Sl.No.(vii) to Clause I by the impugned Notification No.6/2014-ST, dated 11th July, 2014, as arbitrary, unfair and resulting in hostile discrimination and contrary to Article 14, Article 19(1)(9) and Article 21 of the Constitution of India.

Writ Petition No. 26182 of 2014 filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare Sub-clause (vi) to clause (o) of Section 66D of the Finance Act, 1994 effective as ultra vires Articles 14, 19(1)(g) and 21 of the Constitution of India in so far as it excludes few service providers in the transportation of passengers from the negative list. (Amended as per order of court dt. 10.3.2015 passed in M.P.No.1 of 2015).

For Petitioner : Mr. Sriram Panchu, Sr. Counsel for Mr. C. Saravanan

For Respondents : Mr. V. Sundareswaran Central Government Counsel.

COMMON ORDER

(Made by The Hon'ble The Chief Justice)

A common additional counter-affidavit has been filed by the respondents. It is averred in paragraph 2 that qua M/s. Fast Track Private Limited, the said taxi has been discharging service tax liability under "Rent-a-cab Operator's Services", but the manner in which they have calculated their liability appears to be not correct as far as the department is concerned and therefore, proceedings have been initiated. We make it clear that we would not comment on this aspect for the reason that we cannot prejudice an assessee by making observations in the present proceedings.

2. As far as M/s. Pre-paid Tax Service are concerned, it is stated that the same falls within the jurisdiction of another Commissionerate and instructions have already been issued to verify the position.

3. Learned Senior Counsel for the petitioner submits that the aforesaid does not satisfy the case of the petitioner and he wants equality in this behalf.

4. We are unable to accept the plea of the learned Senior Counsel for the petitioner, as there cannot be any equality in taxation matters. In fact, we reluctant, to satisfy ourselves, about the discharge of tax liability, had passed orders on 10.03.2015, when the learned Senior Counsel himself had stated that if what was set out in paragraph 8 is the ground reality, he would have no challenge.

5. It may be possible that in a given situation, an assessee may say that he is entitled to exemption and may be able to substantiate his plea. That right would be effected by saying that the third parties should also pay, as the petitioner pays tax based on their liability, if the department feels that the petitioner is right in assessing his liability, while for others it may not be so.

6. We are of the view that no further direction is required. The petitions accordingly stand closed. If the petitioner has any other remedy available in law, it is always open to the petitioner to avail of the same. No costs.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Copies to;

1. The Union of India
   Ministry of Finance
   Department of Revenue
   North Block, New Delhi 110 001.

2. The Commissioner of Service Tax
   Newry Towers, No.2054-I
   2nd Avenue, Fourth Floor
   Anna Nagar, Chennai-600 040.

+ 1 cc to Mr.V.Sundareswaran, Advocate SR 24001

+ 2 ccs to Mr.C.Saravanan, Advocate SR 23546

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