IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38006 of 2003 &
WPMP No.46146 of 2003

V.Shanmugam .. Petitioner

Vs

1 The Superintendent (Service Tax)
Office of the Deputy Commissioner
of Central Excise (Tirupur Division)
1st Floor, Kumaran Shopping Complex
Kumaran Road, Tirupur 641 601.

2. The Union of India
rep. By the Secretary
Ministry of Finance Department of Revenue
New Delhi.
.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for Writ of mandamus to forbear the first respondent herein from imposing service tax under the head "business auxiliary services"in respect of the petitioner who is a Sales Tax Practitioner, in the absence of a charging provision therefor under the Service Tax Act.

For Petitioner : Mr.B.Raveendran

For Respondents: Mr.A.P.Srinivas
Sr Panel Counsel

O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.A.P.Srinivas, learned Senior Panel Counsel , appearing for the respondents and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is a Sales Tax Practitioner, taking care of matters before the Assessing Officers and the Appellate Authorities, on behalf of their clients. It is stated that in most of the cases, the retired Department Officials are engaged as Consultants by various dealers. Though notice dated 18.11.2003, was issued by the first respondent, directing the petitioner to apply in Form ST-1 for registration with their office, in default, action would be initiated against the petitioner under section 75-A, 75, 76 and 77 ibid, the petitioner has come forward with this Writ Petition, praying for forbearing the first respondent from imposing service tax under the head "business auxiliary services" in respect of him who is a Sales Tax Practitioner, in the absence of a charging provision therefor under the Service Tax Act.

3.The learned counsel for the petitioner submitted that the notice proposes to term the petitioner's service as "business auxiliary services" and the petitioner is ready and willing to submit his objections to the said notice and the first respondent may be directed to take a decision on merits.

4.Accordingly, without going into the merits of the notice issued by the first respondent, a direction is issued to the petitioner to submit his reply to the notice dated 18.11.2003, within a period of eight weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent shall consider his objection and pass a speaking order on merits and in accordance with law, as expeditiously as possible.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rpa
To
1 The Superintendent (Service Tax)
Office of the Deputy Commissioner
of Central Excise (Tirupur Division)
1st Floor, Kumaran Shopping Complex
Kumaran Road, Tirupur 641 601.

2. The Secretary Union of India
Ministry of Finance Department of Revenue
New Delhi.

+ 1 cc to M/s. Chandran Karuppiah, Advocate SR.32933
+ 1 ccto Mr.A.P. Srinivas, Advocate Sr.3358

W.P.No.38006 of 2003

NRJK(CO)
EU 14.7.16