BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.07.2016
CORAM :
THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1234 of 2016
and
C.M.P(MD)No.8207 of 2016

A.Chandra ... Appellant

Vs.

1.Union of India,
Rep by its Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

2.The Superintendent of Central Excise,
Melur Range, Madurai II Division,
Bibikulam, Madurai. ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 21.10.2010 made in W.P(MD)No.11272 of 2010 on the file of this Court.

Prayer in WP(MD). 11272/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ, order or direction or any other writ in the nature of a Writ of Certiorari call for the records pertaining to the order passed by the 2nd respondent in O.C.No.1548/2010 dated 23.08.2010 and quash the same.

For Appellant : Mr.J.Anandkumar
For 2nd Respondent : Mr.R.Nandakumar, Standing Counsel
For 1st Respondent : Mr.R.Murugappan

JUDGMENT

(Judgment of the Court was delivered by **NOOTY.RAMAMOHANA RAO,J**)

It is represented by the learned counsel for the appellant and it is also agreed by the learned counsel for the respondents that while entertaining similar *lis* by this Court in W.A(MD)Nos.1579 and 1741 of 2011, dated 16.12.2015, the following order was passed:-

"Both these Writ Appeals arise out of the dismissal of the Writ Petitions filed by the appellants herein, challenging the demand for service tax.

2. Heard Mr.J.Anandkumar and Mr.R.Sundar Srinivasan, learned counsel appearing for the appellants, Mr.R.Murugappan, learned counsel appearing for the first respondent in both the Writ Appeals and Mr.R.Aravindan, learned Standing Counsel appearing for the second respondent in W.A.(MD)No.1579 of 2011.

3. The demand for service tax made as against the appellants herein, related to the years 2005 to 2009. But, it appears that by a Notification No.24/2009-Service Tax, dated 27.07.2009, the Government exempted the taxable service referred to in Sub-Clause (zzg) of clause (105) of Section 65 of the Finance Act, 1994, provided to any person by any other person in relation to management, maintenance or repair of roads.

4. But, by a Notification bearing No.25/2012-Service Tax, dated 20.06.2012, issued by the Department of Revenue, Ministry of Finance, Government of India, the Government exempted certain taxable services listed out in the Notification. Serial No.13 of the said notification reads as follows:

"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income Tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

a structure meant for funeral, burial or cremation of deceased."

5.The question as to whether the above Notification would have retrospective effect for the period from 2005 to 2009, was also answered by Notification No.24/2009-Service Tax, dated 27.07.2009, which was issued under Section 93 of the Finance Act, 1994. The special provision for exemption in certain cases relating to service tax on repair of roads was made in Section 97 of the Finance Act, 1994. The Notification No.24/2009 states that the exemption has been extended *even for the earlier period from 16.06.2005 to 26.07.2009.*

6.In view of the above notifications, the Writ Appeals are allowed and the orders passed in the Writ Petitions as well as the orders impugned therein are set aside. No costs. Consequently, the connected miscellaneous petitions are closed."

2.The writ appeal is allowed in the above terms. No costs. Consequently, C.M.P(MD)No.8207 of 2016 is closed.

Sd/-
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,Union of India,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2.The Superintendent of Central Excise,
   Melur Range, Madurai II Division,
   Bibikulam, Madurai.

Sms
CSL/DB/25.11.2016:3P/3C

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