IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.11.2017

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM

W.P.Nos.28384 & 28385 of 2017 & WMP.Nos.30481 to 30483 of 2017

M/s.JSK Film Corporation, rep.by
its Sole Proprietor J.Satish Kumar ...Petitioner
Both WPs.

Vs

1.The Additional Commissioner of Service
Tax, Service Tax Commissionate II,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai-40.

2.The Addititional Director General,
Directorate of Central Excise
Intelligence, C-3, C Wing, II Floor,
Rajaji Bhavan, Besant Nagar, Chennai-90.

3.The Commisioner of Service Tax,
Office of the Commissioner of Service
Tax II, Newry Towers, 12th Main Road,
II Avenue, Anna Nagar, Chennai-40. ...Respondents
Both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the impugned Common Order in Original Nos.75/2017-ST-II (ADC) and 76/2017-ST-II (ADC) respectively, both dated 22.5.2017 with the reference C.No.IV/ 09/62/2016 -STII ADJ on the file of the 1st respondent and quash the same.

For Petitioner : Mr.S.Ramamurthy
For Respondents : Mr.A.P.Srinivas, SPC

COMMON ORDER

Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner has challenged a common Order-in-Original dated 22.5.2017 passed by the first respondent, by which, the service provided by the petitioner was classified as copyright services as defined under Section 65(105)(zzzzt) of the Finance Act, 1994 for the periods specified in the impugned common order

as a service defined under Section 65B(44) of the said Act, as it has been declared as a service specified under Section 66E(c) of the said Act for the services rendered by them. Accordingly, the demand of service tax made, both in the show cause notice dated 10.10.2015 and the statement of demand dated 27.4.2016, was confirmed, apart from imposing equivalent penalty under Section 78 of the said Act and another penalty under Section 76 (1) of the said Act.

3. The petitioner would fairly state that the legal issue, which they had raised before the first respondent, is answered by a Division Bench of this Court in the case of AGS Entertainment Pvt. Ltd. Vs. Union of India [reported in 2013-TIOL-521-HC-MAD-ST], (to which, I am a party), which is against the assessee. However, an appeal is pending before the Hon'ble Supreme Court against the said judgment. Therefore, the learned counsel for the petitioner would state that the petitioner may be permitted to file an appeal before the Commissioner (Appeals), Chennai and that this Court may exercise its discretion by permitting the petitioner to file an appeal, as the appeal is, as of now, time barred.

4. I have heard Mr.A.P.Srinivas, learned Senior Panel Counsel on this aspect also.

5. Considering the fact that the legal issue is clearly covered against the petitioner and the fact that an appeal is a legal right conferred on the assessee by virtue of the statutory provisions, this Court is inclined to grant such an opportunity, however, subject to a condition.

6. Accordingly, the writ petitions are disposed of with a direction to the petitioner to pay 15% of the demand of service tax covered in the impugned common Order-in-Original [as per paragraph 75A.(ii) based on the show cause notice dated 10.10.2015 and as per paragraph 75B.(i) based on the statement of demand dated 27.4.2016] within a period of three weeks from the date of receipt of a copy of this order. If such a condition is complied with, then the Appellate Authority may entertain the appeal without reference to the question of limitation. It is made clear that this payment shall also be reckoned for the mandatory pre-deposit of 7.5% of the service tax demand from the petitioner in both the cases. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS
To
1.The Additional Commissioner of Service Tax,
Service Tax Commissionate
II, Newry Towers, No.2054-I, II Avenue, Anna Nagar,
Chennai-40.

2.The Additiional Director General,
Directorate of Central Excise Intelligence,
C-3, C Wing, II Floor, Rajaji Bhavan, Besant Nagar,
Chennai-90.

3.The Commisioner of Service Tax,
Office of the Commissioner of Service
Tax II, Newry Towers, 12th Main Road, II Avenue,
Anna Nagar,
Chennai-40.

+1cc to Mr.S.Ramamurthy, Advocate Sr.No.79198
+1cc to Mr.A.P.Srinivas, Advocate SR.No.78762

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