IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.08.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.3164 of 2006
and
W.P.M.P.No.3312 of 2006

21st Century Transports
Rep. by its Partner,
Mr.A.Shahjahan,
No.F/201, Kailash Complex,
Park site, Vikhroli (W),
Mumbai 400 079. ...Petitioner

Vs.

1. The Income Tax Officer,
   Ward V (4),
   Chennai.

2. Union of India,
   Ministry of Finance,
   Rep. by its Secretary
   Department of Revenue
   Central Secretariat,
   North Block,
   New Delhi - 110 001. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of declaration, declaring the provisions of Sec 83 of the Finance Act 2001, as unconstitutional and bad in Law and striking down the same as arbitrary and ultra vires Articles 19, 265 of the Constitution of India.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Ms.Hema Muralikrishnan

O R D E R

Heard Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner and Ms.Hema Muralikrishnan, learned counsel appearing for the respondents.

2. The petitioner seeks for declaration to declare the provisions of Section 83 of the Finance Act 2001, as unconstitutional. Section 251 of the Income Tax Act had been amended by Finance Act, 2001. The same was examined by the Hon'ble Division Bench of this Court in the case of Dr.K.Nedunchezhian Vs. Dy. CIT of Income Tax Act (2005) 279 ITR 0342 and it is held that the appellate power includes all the powers of the original authority and hence the appellant can raise all the points which he is urging before the Court in the Writ Appeals before the appellate authority. Therefore, the challenge to the provisions of Section 251 of the Income Tax Act has to necessarily fail.

3. Accordingly, the prayer sought for is rejected and the Writ Petition is dismissed. However, liberty is granted to the petitioner to challenge the order dated 21.12.2005 and the period during which, the Writ Petition was pending i.e., from 31.06.2006 till the date of receipt of the certified copy of this order, shall be excluded while computing limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nmm
To

1. The Income Tax Officer,
   Ward V (4), Chennai.

2. The Secretary,
   Union of India, Ministry of Finance,
   Department of Revenue
   Central Secretariat,
   North Block, New Delhi - 110 001.

+1 cc to M/s.Mallika Srinivasan Advocate sr 58045
+1 cc to M/s.Hema Muralikrishnan Advocate sr 58019

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aa22/09/2017