

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 15507 of 2007

M/s. P.M. Palani Mudaliar & Co.,
rep. by its Partner P. Pandian
36, Coral Merchants Street,
Chennai 600 001.

..Petitioner

Vs.

1. Union of India rep. by
The Secretary,
Ministry of Finance,
North Block,
New Delhi.

2. The Commissioner of Income Tax,
Chennai - III,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Declaration declaring the provisions under Sections 3 and 4 of Taxation Laws (Amendment) Act, 2005, insofar as it seeks to deny the deduction under Section 80HHC in respect of profit and sale of DEPB scripts in case of exporters having export turnover exceeding Rs.10 crores with retrospective effect, as ultra vires the Articles and therefore, unenforceable and of no effect so far as the petitioner herein is concerned.

For Petitioner :: Mr.V.S. Jayakumar

For Respondents :: Mr.J. Narayanaswamy

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O R D E R

Heard Mr.V.S. Jayakumar, learned counsel for the petitioner and Mr.J. Narayanaswamy, learned counsel for the respondents.

2. The petitioner seeks for issuance of a Writ of Declaration declaring the provisions under Sections 3 and 4 of Taxation Laws (Amendment) Act, 2005, insofar as it seeks to deny

the deduction under Section 80HHC in respect of profit and sale of DEPB scripts in case of exporters having export turnover exceeding Rs.10 crores with retrospective effect, as ultra vires the Articles of the Constitution of India.

3. The issue has been settled by the decision of the Honourable Supreme Court in the case of COMMISSIONER OF INCOME TAX AND ANOTHER V. AVANI EXPORTS & OTHERS reported in (2015) Volume 277 CTR 460. The operative portion of the judgment reads as follows:

"3. The High Court vide impugned judgment has decided the issue in favour of the writ petitioners by concluding as under:

"26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessee whose assessments were still pending although such benefit will be available to the assessee whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a few section of the assessee.

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessee whose export turnover is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessee".

4. Against the High Court judgment, these SLPs are filed by the Union of India. Mr. Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to sever the aforesaid two conditions as onerous and ultra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs.10 crores and others like the respondents with turnover of more than Rs.10 crores would be at par and both would be entitled to the benefits.

5. We find that in essence the High Court has quashed the severable part of third and fourth provisos to S.80HHC(3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the

direction of the High Court with the following direction:

"Having seen the twin conditions and since s.80HHC benefit is not available after 1st April, 2005, we are satisfied that cases of exporters having a turnover below and those above 10 crore

T.S. SIVAGNANAM, J.

nv

should be treated similarly. This order is in substitution of the judgment in appeal."

With the aforesaid clarification all these SLPs including that of assessee filed against the judgment of Madhya Pradesh High Court are disposed of."

4. The Revenue does not dispute the fact that the issue involved in this writ petition is squarely covered by the above referred decision. The conclusion arrived at by the Honourable Supreme Court in the aforesaid decision is that "Amendment of s.80HHC(3) made by insertion of certain conditions in the third and fourth provisos thereto with retrospective effect by Taxation Laws (Second Amendment) Act, 2005 is quashed; exporters having turnover below Rs.10 crores and those having turnover above Rs.10 crores should be treated similarly". Thus, the writ petition stands allowed in terms of the orders passed by the Honourable Apex Court. No costs.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1. The Secretary,
Ministry of Finance,
North Block,
New Delhi.

2. The Commissioner of Income Tax,
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121, Mahatma Gandhi Road,
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+1 CC to Mr.J. Narayanaswamy Advocate SR.NO.69243

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VC (27/10/2017)