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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.22434 of 2017
and
W.M.P.(MD)Nos.18751 and 18752 of 2017

Sheik Ahamed Ibrahim,
Proprietor,
A1 Makkah Haj Service,
Old No,2/142. New No.2/139,
Mathur Post, Alagar Kovil Via,
Madurai-625 301. ... Petitioner

Vs.

1.Government of India,
Rep by its Secretary,
Ministry of Minority Affairs,
Haj Division, ISIL Building,
V.K.Krishnavelan Bhavan,
9, Bhagavandas Marg,
New Delhi.

2.The Superintendent (Preventive),
O/o The Commissioner of GST,
Lal Bahathur Sasthiri Road,
B.B.Kulam, Madurai. ...Respondents

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned proceedings of the 2nd respondent in C.No.V/12/37/2017HPU dated 20.11.2017 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff

For R1 : Mr.V.Kathirvelu,
Additional Solicitor General of India
Assisted by Mr.S.Jeyasingh

For R2 : Mr.R.Aravindan

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O R D E R

This Writ Petition has been filed challenging the proceedings No. C.No.V/12/37/2017HPU dated 20.11.2017 issued by the second respondent, in which it has been stated as follows:

> "It is informed that only the services provided by (a) Kumanon Mandal Vikas Nigam Limited, a Government of Uttarkhand Undertaking (Pilgrimage to Mansarover) and (b) "Committee"or "State Committe" as defined in Section 2 of the Haj Committee Act, 2002 are exempted from payment of tax vide Notification No:17/2014 ST dated 20.08.2014 and the notification No.25/2016 ST dated 17.05.2016 exempted the services provided by the above said specified organizations for the period from 01.07.2012 to 19.08.2014. Therefore, the Private Toru Operators are not exempted and they are liable to pay service tax for the services rendered by them. "

2.The learned counsel for the petitioner submits that the second respondent has already pre-decided the issue by stating that except the two services mentioned therein, the Private Tour Operators are liable to pay service tax for the services rendered by them.

3.The learned counsel for the second respondent on the contrary states that the notice does not give any conclusive finding that the services of the petitioner fall for payment of service tax and it has to be seen that for the purpose of determining whether the petitioner would be liable to pay service tax, following documents have been sought:-

> 1.Income tax Returns for the period from 2012-13 to 2016-17 along with the Schedules.
> 2.26AS forms for the period from 1012-13 to 2016-17.
> 3.Bills/Invoices raised for the clients for the abovesaid period
> 4.Permission letter granted by the Government for conducting the Pilgrimage Tour.
> 5.Other Documents in connection with conducting the Pilgrimage Tour, if any.

4.In the light of the aforesaid submissions, it is incumbent upon the second respondent to specifically determine on the basis of materials placed as to whether the services rendered by the petitioner fall for the liability for service tax or not. It is only after giving specific finding on the materials produced regarding the applicability or otherwise of service tax for the services extended by the petitioner that it would be open to the second respondent to proceed further for levying any service tax on the petitioner.

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5.With the aforesaid observations, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

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/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Ministry of Minority Affairs,
Haj Division, ISIL Building,
V.K.Krishnavelan Bhavan,
9, Bhagavandas Marg,
New Delhi.

2.The Superintendent (Preventive),
O/o The Commissioner of GST,
Lal Bahathur Sasthiri Road,
B.B.Kulam, Madurai.

+1cc to M/S.R.Aravindan, Advocate SR.No. 92077
+1cc to M/S.S.Jeyasingh, Advocate SR.No. 91848

W.P.(MD)No.22434 of 2017

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JM/KK/SAR 1/10.01.2018/3P/5C

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