BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].Nos.902, 903, 904 & 905 of 2017
and
C.M.P.(MD)Nos.6064, 6065, 6066 & 6067 of 2017

W.A.(MD)No.902 of 2017

P.Ramu : Appellant

Vs.

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

2.The Commissioner,
Central Excise,
Lal Bahadur Shastri Salai,
Bibikulam, Madurai. :Respondents

PRAYER: Writ Appeal is filed under Clause 15 Letters Patent Act, to call for the records relating to the order passed by this Court in W.P.(MD)No.9791 of 2010 dated 21.10.2010 set aside the same and consequently allow this Writ appeal.

Prayer in WP(MD). 9791/ 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI call for the records pertaining to the order passed by the respondents in C.No.V/12/202/2009 HPU dated 6.4.2010 .

W.A.(MD)No.903 of 2017

A.Ramaiah : Appellant

Vs.

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

2.The Commissioner,
Central Excise,
Lal Bahadur Shastri Salai,
Bibikulam, Madurai. :Respondents

PRAYER: Writ Appeal is filed under Clause 15 Lettrs Patent Act, to call for the records relating to the order passed by this Court in W.P.(MD)No.9794 of 2010 dated 21.10.2010 set aside the same and consequently allow this Writ appeal.

Prayer in WP(MD). 9794/ 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI call for the records pertaining to the order passed by the respondents in C.No.V/12/74/2010 HPC dated 14.6.2010 .

W.A.(MD)No.904 of 2017

N.Majeet : 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
Customs and Service Tax,
Sivagangai Range,
175-1, Gandhiji Street,
Sivagangai District. :Respondents

PRAYER: Writ Appeal is filed under Clause 15 Lettrs Patent Act, to call for the records relating to the order passed by this Court in W.P.(MD)No.11983 of 2010 dated 21.10.2010 set aside the same and consequently allow this Writ appeal.

Prayer in WP(MD). 11983/ 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI call for the records pertaining to the order passed by the respondents in O.C.No. 389/2010 dated 2.9.2010 .

W.A.(MD)No.905 of 2017

A.Muthuramalingam : 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,
Sivagangai Range,
175-1, Gandhiji Street,
Sivagangai District. :Respondents

PRAYER: Writ Appeal is filed under Clause 15 Lettrs Patent Act, to call for the records relating to the order passed by this Court in W.P.(MD)No.11985 of 2010 dated 21.10.2010 set aside the same and consequently allow this Writ appeal.

Prayer in WP(MD). 11985/ 2010 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI call for the records pertaining to the order passed by the respondents in O.C.No. 338/2010 dated 19.8.2010.

For Appellant : Mr.J.Anandkumar in all Writ Appeals

For Respondents : Mr.R.Aravindan in all Writ Appeals

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.Anandkumar, learned counsel appearing for the appellants in all appeals and Mr.R.Aravindan, learned Senior Standing Counsel appearing for the respondents in all appeals.

2.These appeals are directed against a common order in W.P(MD) No.9791 of 2010 etc. batch dated 21.10.2010. The said writ petitions were heard along with other connected matters and the learned Single Judge dismissed the said writ petitions. It appears that subsequently, another set of Writ petitions were also dismissed and as against which, Writ appeals were preferred in W.A.(MD)Nos.1579 and 1741 of 2011 and the Division Bench of this Court, by judgment dated 16.12.2015, allowed the Writ Appeals.

3.Though the Writ petitions were rejected by the Learned Single Judge as premature, the issue involved in these matters are covered by the decision of the Division Bench. For better appreciation, the relevant portion is quoted here under:

> *"4.Mr.G.R.Swaminathan, learned counsel for the petitioners Association had stated that his clients are seeking for a declaratory relief. Therefore, question of availing alternative remedies will not arise.*
>
> *5.On notice from this Court, the respondents have filed counter affidavits, dated 11.06.2010 and an*

additional counter affidavit, dated 04.10.2010. They have also raised objections regarding maintainability Writ petitions against mere summons issued by the association, it was additional contended that the association cannot maintain such Writ petitions.

6.Mr.R.Aravindan, learned Senior Standing Counsel, appearing for the respondents also brought to the notice of this Court that in an identical circumstance, the Principal Bench of this Court rejected the Writ petitions filed by the similarly placed persons challenging the summons in M/s,Karvembu & Co. Vs. The Under Secretary to Government of India, Department of Revenue, New Delhi and others reported in 2010-TIOL-676-HC-MAD-ST, dated 14.09.2010. In that judgment, the learned Judge in praragraphs 8 and 9 repelled the contentions raised by the petitioners, which are as follows:

"8.The issue to be decided in these writ petitions is, in the light of the notification issued on 27.7.2009 granting exemption from paying service tax for the works in relation to management, maintenance or repair of roads, whether the said exemption can be taken advantage of by the petitioners for the earlier period i.e, for the period from 16.6.2005 to 25.7.2009.

9.The facts in these cases are not in dispute. The contractors are doing road repair/maintenance works. The said works are awarded by the Highways Department or Local Bodies. It is an admitted case that for laying new roads, widening narrow roads and for changing road surface, no service tax is payable. Maintaining the already laid roads, viz., resurfacing, renovation, strengthening, relaying, filling potholes, etc., are carried on in the already laid roads which are called road maintenance. The repair/maintaining of the existing roads are also carried out by the Highways Department or Local Bodies through contractors. In the Notification dated 27.7.2009, the maintenance and repair of roads are exempted from paying service tax. The said notification reads as follows:

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

New Delhi, the 27th July, 2009

Notification No.24/2009-Service Tax

G.S.R.(E)- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts 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, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.
Sd/- ....
Under Secretary to the Government of India"

Thus, it is manifest that the Central Government on 27.7.2009 taking note of public interest granted exemption from paying service tax in relation to works namely management, maintenance/ repairs of roads under Sec.66 of the Finance Act, 1994. The said notification nowhere states that the exemption is granted with retrospective effect. It is well settled in law that unless a notification issued specifically stating 'with retrospective effect', such notification will operate only prospectively..."

Following the above decisions, these appeals are allowed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government, Union of India,
Ministry of Finance, Department of Revenue, New Delhi.
2.The Commissioner, Central Excise,
Lal Bahadur Shastri Salai, Bibikulam, Madurai.
3.The Superintendent of Central Excise
Customs and Service Tax, Sivagangai Range,
175-1, Gandhiji Street, Sivagangai District.

Gns/Myr
RL/4C/5P/KP/SAR1/28/7/2017

ORDER MADE IN
W.A.[MD].Nos.902, 903, 904 & 905 of 2017
and
C.M.P.(MD)Nos.6064, 6065, 6066 & 6067 of 2017

29.06.2017