THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 13708 of 2017

ORDER: ***(Per VRS,J)***

The petitioners, who are licensees under the A. P. Excise Act, 1968, authorized to sell liquor, have come up with the present writ petition, seeking a declaration that Section 68(2) of the Finance Act, 1994 and Rule 2(1)(d) of the Service Tax Rules, 2000 as well as a Circular, are illegal and unconstitutional.

2. Heard Mr. Chandraiah Sunkara, learned counsel for the petitioners. Mr. B. Narayana Reddy, learned Assistant Solicitor General, takes notice for the respondents.

3. When similar matters came up before the First Bench of this Court, the licensees were permitted to file statutory appeals and raise all the issues. The operative portion of the order passed by the First Bench of this Court, dated 01.02.2017, in W.P.No.41626 of 2016, reads as follows:

"Sri D. Prakash Reddy, learned Senior Counsel appearing on behalf of the petitioners, would submit, on instructions, that, while the petitioners are agreeable to the suggestion put-forth on behalf of the revenue, their interests should be safeguarded directing the assessing authority to pass the assessment order uninfluenced by the assertions in the counter affidavit filed by the Principal Commissioner of Customs, Excise and Service Tax, or the instructions issued by him in

this regard, or even by the observations made in the proceedings of the Deputy Commissioner, Service Tax, Anti Evasion, Group-I dated 08.11.2016. Learned Senior Counsel would further submit that, with a view to enable the petitioners to question the assessment order, the respondents be directed not to take coercive steps either for their registration or for recovery of service tax till the assessment order is communicated to the petitioners, and for a period of three weeks thereafter. Sri M.V.J.K. Kumar, learned Standing Counsel is agreeable for such an order to be passed.

We consider it appropriate, therefore, to dispose of the writ petition directing the respondents not to take any coercive action against the petitioners either for their not registering themselves under Finance Act or for non-payment of service tax, till an assessment order is passed in accordance with law and for a period of three weeks after the said order is communicated to the petitioners. As the vires of several provisions are under challenge in this writ petition, suffice it if all the questions raised in the present writ petition are left open to be urged, if need be, in subsequent legal proceedings."

This Writ Petition is also, accordingly, disposed of, to the same effect.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

18th April, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No. 13708 of 2017
(disposed of)

18th April, 2017

cbs