IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1386 of 2011 and
M.P.No.1 of 2011

1.Union of India, rep. by
The Secretary, Department of Revenue,
Ministry of Finance,
New Delhi - 110 001.

2.The Chairman
Central Board of Excise and Customs
North Block, New Delhi - 110 001.

3.The Chief Commissioner of Central Excise,
Nungambakkam High Road,
Chennai - 600 034. ...Appellant/Respondent

Vs

M/s.Wheels India Ltd.,
Padi, Chennai - 600 050. ...Respondent/Petitioner

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 16.08.2010 made in W.P.No.6748 of 2006.

W.P.No.6748 of 2006:

Writ petition filed under Article 226 of the constitution of India praying to issue a Writ of Declaration declaring the provisions of explanation under Section 65(105) of the Finance Act 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules 1994 ad introduced by Finance act 2005 and Notification No.23/2005 ST dated 7.6.2005 respectively as ultra vires of Articles 19(1)(g) 245 and 265 of the Constitution of India in so far as the petitioner is concerned.

For Appellants : Mr.A.P.Srinivas
Standing Counsel

For Respondent : Mr.N.Murali

J U D G M E N T
(made by K.K.SASIDHARAN,J.)

This intra court appeal is directed against the order dated 16 August 2010 in W.P.No.6748 of 2006, whereby and where under, the learned single Judge by following the earlier decision rendered by the Division Bench of the Bombay High Court, which was confirmed by the Hon'ble Supreme Court by judgment, dated 14 December 2009 in S.L.P.Civil No.18932 of 2009, allowed the writ petition. The learned single Judge opined that in view of the law laid down by the Hon'ble Supreme Court, the appellants herein are not entitled to levy service tax from the respondent for the period from 01.03.2002 to 17.04.2006 in relation to the services in question.

2. The appellants filed the appeal by relying on a judgment of the Rajasthan High Court in Union of India v. Aditya Cement [2008 (10) STR 228 (Raj)].

3. The learned Standing Counsel for the appellants fairly submitted that the law laid down by the Hon'ble Supreme Court in S.L.P.Civil No.18932 of 2009 is still holding the field.

4. The learned single Judge by placing reliance on the law laid down by the Division Bench of the Bombay High Court, which was confirmed by the Hon'ble Supreme Court in S.L.P.Civil No.18932 of 2009 allowed the writ petition filed by the respondent. There is no question of setting aside the order passed by the learned single Judge on the basis of a decision rendered by a learned single Judge of the Rajasthan High Court. The appellants have filed this appeal without any legal basis. When there is a judgment rendered by the Hon'ble Supreme Court interpreting the provisions of Service Tax, it is not open to the appellants to file an appeal by placing reliance on the decision of the High Court of Rajasthan. In fact, the decision rendered by the High Court of Rajasthan was much prior to the judgment rendered by the Hon'ble Supreme Court .

5. The High Court is flooded with litigations at the instance of the Government and the present case is a classic example as to how appeals are filed in a routine manner by placing reliance on the judgment of the High Court in a matter wherein, the issue is covered by the judgment of the Hon'ble Supreme Court. We hope and trust that the Union of India would not file such frivolous appeals henceforth.

6. The writ appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary, Department of Revenue,
Ministry of Finance,
New Delhi - 110 001.

2. The Chairman
Central Board of Excise and Customs
North Block, New Delhi - 110 001.

3. The Chief Commissioner of Central Excise,
Nungambakkam High Road,Chennai 34.

4. The Secretary, Ministry of Law and Justice
Govt. of India, Shastri Bhavan
New Delhi - 110 001.

+1 CC to Mr.A.P. Srinivas, Advocate sr 4225.

W.A No.1386 of 2011

BR(CO)
SP(15/02/2018)