IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.6285 and 6286 of 2008
and M.P.No.1 of 2008

W.P.No.6285 of 2008:-

The India Cements Ltd.,
Rep. by its Vice President Legal affairs,
Mr.Rajan Ramani,
Dhun Building,
827 Anna Salai, Chennai-600 002. ... Petitioner

-vs-

1.The Commissioner of Service Tax,
Service Tax Commissionerate,
Anna Salai, Nandanam,
Chennai-600 035.

2.The Additional Director General,
Office of the Additional Director General,
Directorate General of Central Excise
Intelligence, Chennai Zonal Unit,
C-3, "C" Wing, Rajaji Bhavan,
Besant Nagar, Chennai-600 090. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Prohibition, prohibiting the first respondent or any other officer exercising power under the Finance Act, 1994 from proceeding further with the impugned show cause No.81/07 OR No.1/2007 dated 27.12.2007 bearing reference F.No.INV/DGCEI/CHZU/ST/67/2007 issued by the second respondent contrary to CBEC Circular No.36/4/2001-ST dated 08.10.2001.

W.P.No.6286 of 2008:-

The India Cements Ltd.,
Rep. by its Vice President Legal affairs,
Mr.Rajan Ramani,
Dhun Building,
827 Anna Salai, Chennai-600 002. ... Petitioner

-vs-

1.Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
Southe Block, New Delhi-110 001.
[R1-Impleaded as per order dated 18.11.2010
in M.P.No.1 of 2010 in W.P.No.6286 of 2008]

2.The Commissioner of Service Tax,
Service Tax Commissionerate,
Anna Salai, Nandanam,
Chennai-600 035.

3.The Additional Director General,
Office of the Additional Director General,
Directorate General of Central Excise
Intelligence, Chennai Zonal Unit,
C-3, "C" Wing, Rajaji Bhavan,
Besant Nagar, Chennai-600 090. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration, declaring Section 66A of the Finance Act, 1994 as inserted by the Finance Act, 2006 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 as inserted vide Notification No.11/2006-S.T., dated 19.04.2006 and issued under Section 93 and Section 94 and Section 66A of the Finance Act, 1994 as ultra vires the Finance Act, 1994 and Art 14, 19(1)(g) and Art 265 of the Constitution of India.

For Petitioner : Mr.R.Anish Kumar
(in both W.Ps.)
For Respondents : Mr.S.R.Sundar,
(in both W.Ps.) Senior Panel Counsel

COMMON ORDER

Heard Mr.R.Anish Kumar, learned counsel for the petitioner and Mr.S.R.Sundar, learned Senior Panel Counsel for the respondents.

2. The petitioner has filed these writ petitions challenging the show cause notice and seeking for a declaration to declare Section 66(A) of the Finance Act, 1994 inserted by Finance Act, 2006 as ultra vires the Finance Act, 1994 and violative of Articles 14, 19(1)(g) and 265 of the Constitution of India.

3. Identical prayer was considered by the Hon'ble First Bench of this Court in a batch of cases in L.S.Mills Ltd. and Others vs. Union of India and Others in W.P.Nos.8124 of 2006 and etc. batch dated 19.08.2014. The order reads as follows:-

> "These petitions raise a common question of applicability of service tax on alleged taxable services provided by a non-resident or a person located outside India, to a recipient in India.
>
> 2. The learned counsel for the parties state that the Special Leave Petition filed against the judgment of the Bombay High Court in Indian National Shipowners Association v. Union of India [2009 (13) STR 235], having been dismissed by the Hon'ble Supreme Court, service tax liability on any taxable service provided by a non-resident or a person located outside to a recipient in India, would arise with effect from 18.4.2006, i.e. after enactment of Section 66A of Finance Act, 1994.
>
> 3. As far as the period post 18.4.2006 is concerned, the views of the Delhi and Allahabad High Courts in (2007) 7 VST 43 (Orient Crafts Ltd. v. Union of India) and (2012) 25 STR 209 (Glyph International Ltd. v. Union of India) respectively favour the department. However, the Hon'ble Supreme Court has granted leave to appeal and the matters are yet to be listed for final disposal.
>
> 4. In the aforesaid facts and circumstances, we hold that the parties would be bound by the judgment to be rendered by the Hon'ble Supreme Court. However, in case some aspects raised in these petitions are not addressed by the Hon'ble Supreme Court, the parties are at liberty to revive these petitions.
>
> 5. These writ petitions are closed in terms aforesaid. The interim orders would enure to the benefit of the parties till a decision is rendered by the Hon'ble Supreme Court. The parties will individually reply to the show cause notices sent to them, so that the proceedings are kept alive. No costs. Consequently, connected miscellaneous petitions are closed."

4. In the light of the above, Writ Petition No.6286 of 2008, wherein the petitioner has sought for identical relief, is disposed of on the same line as per the order passed by the Hon'ble First Bench referred above.

5. So far as Writ Petition No.6285 of 2008 is concerned, the petitioner had challenged the show cause notice and the show cause notice has already been adjudicated and an Order-in-Original has been passed and the petitioner has preferred appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

6. In the light of the above, Writ Petition No.6285 of 2008 is closed giving liberty to the petitioner to canvass all points before the Tribunal and the result in this writ petition will have no impact on the merits of the proceedings before the CESTAT. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

abr

To

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

2.The Commissioner of Service Tax,
Service Tax Commissionerate,
Anna Salai, Nandanam,
Chennai-600 035.

3.The Additional Director General,
Office of the Additional Director General,
Directorate General of Central Excise
Intelligence, Chennai Zonal Unit,
C-3, "C" Wing, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

+2cc to Mr.S.R.Sundar, Advocate SR.No.41621,41622
+1cc to Special Government Pleader SR.No.42023

W.P.Nos.6285 and 6286 of 2008

RJ(CO)
GN(20/07/2018)