IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5156 of 2012
and M.P.No.1 of 2012

M/s.J.K.Constructions
A Partnership Firm represented
by its Partner Mr.A.P.Nandakumar
Katpadi Main Road
Latteri, Vellore District – 632 202.
... Petitioner

Vs.

1.The Commissioner of Central Excise (Appeals)
26/1, Mahatma Gandhi Road
Nungambakkam
Chennai – 600 034.

2.The Additional Commissioner of Central Exise
26/1, Mahatman Gandhi Road
Nungambakkam
Chennai – 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the order No.23/2012 (M-III) St dated 27.01.2012 in Appeal No.163/2011(M-IIII) ST dated 05.08.2011, of the 1st respondent, quash the same.

For Petitioner : Mr.J.Raja Rao
for Mr.R.Saravanakumar

For Respondents: Mr.K.S.Ramasamy,
Senior Panel Counsel



ORDER

Heard Mr.J.Raja Rao, learned counsel representing Mr.R.Saravanakumar, learned counsel on record for the petitioner and Mr.K.S.Ramasamy, learned Senior Panel Counsel for the respondents.

2.The petitioner has filed this writ petition challenging the order passed by the first respondent dated 27.01.2012. The issue pertains to demand of Service Tax from the petitioner under the category of "Management, Maintenance and Repair Services". The Revenue does not dispute the fact that in terms of Section 97 of the Finance Act, 1994, as inserted by Finance Act 23/12 dated 28.05.2012, there is an expression that in respect of Management Maintenance and Repair Services, no service tax shall be levied or collected. The said provision reads as follows:

> *"97.Special Provision for exemption in certain cases relating to management etc., of roads*
>
> *(1) Notwithstanding anything contained in Section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive)."*

3. The period for which Service Tax has been claimed from the petitioner is from 16.06.2005 to 30.09.2008, which falls within the said period during which the legislature has granted exemption. Thus, the impugned order is liable to be set aside.

In the result, the writ petition is allowed and the impugned order dated 27.01.2012 is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Commissioner of Central Excise (Appeals)
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

2.The Additional Commissioner of Central Exise
26/1, Mahatman Gandhi Road
Nungambakkam, Chennai - 600 034.

+1cc to Mr.R.Saravanakumar, Advocate Sr.No.48332
+1cc to Mr.K.S.Ramasamy, Advocate Sr.No.48422

NMI(CO)
sm:7.8.2018

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