IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2018

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.33558 of 2006
and M.P.Nos.1 and 2 of 2006

M/s.Chokkaiyan Karthikeyan and Co.,
Rep. by the Managing Partner,
Civil Contractors,
13, HIG Qts., Housing Unit Colony,
Mathaiyan Kuttai Post,
Mettur Dam-636 452.
Salem District. .. Petitioner

Vs.

1.Union of India,
Rep. by the Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India, North Block,
New Delhi.

2.The Commissioner of Central Excise,
Salem Division,
Anaimedu, Salem.

3.The Superintendent [Service Tax],
Salem-II Division, Salem.

4.Neyveli Lignite Corporation,
Rep. by the Deputy General Manager [Civil],
CTO Building, Neyveli-1. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration to declare the service tax provisions Sections 65 [30 a], 65 [105] [zzq], Section 66 and Section 67 of Chapter V of the Finance Act, 1994 in so far as levy of service tax on composite contract of civil construction of materials supplied and labour in entirety is arbitrary, unconstitutional, contrary to the powers of Parliament under Article 246 and Article 265 of the Constitution, contrary to the basic structure of service tax under Chapter V of Finance Act, 1994.

For Petitioner : Mr.S.Rajesh

For Respondents : MrA.P.Srinivas
Sr. Panel Counsel for R1 to R3

Mr.N.Nithianandam for R4

ORDER

Heard Mr.S.Rajesh, learned counsel for the petitioner, MrA.P.Srinivas, learned Senior Panel Counsel appearing for the respondents 1 to 3 and Mr.N.Nithianandam, learned counsel for the fourth respondent.

2.The petitioner, has sought for a writ of declaration to declare the service tax provisions Sections 65 [30 a], 65 [105] [zzq], Section 66 and Section 67 of Chapter V of the Finance Act, 1994 in so far as levy of service tax on composite contract of civil construction of materials supplied and labour in entirety is arbitrary, unconstitutional, contrary to the powers of Parliament under Article 246 and Article 265 of the Constitution, contrary to the basic structure of service tax under Chapter V of Finance Act, 1994.

3.At this juncture, it may not be necessary for this Court to take a decision on the prayer sought for by the petitioner in the light of the decision of the Hon'ble Supreme Court in Commissioner of C.Ex. & Cus. Kerala Vs. Larsen and Toubro Ltd., reported in 2015 (39) S.T.R 913 (SC).

4.The learned counsel for the petitioner relied upon the decision of the larger Bench of CESTAT in the case of Bhayana Builders (P) Ltd., Vs. Commissioner of Service Tax, Delhi reported in 2013 (32) S.T.R.49 (Tri.-LB).

5.Thus, taking note of the above said decision and the subsequent developments which have taken place in similar matters, this writ petition is disposed of giving liberty to the petitioner to approach the competent authority by bringing to the notice of the concerned officials, decision in the case of Commissioner of C.Ex. & Cus. Kerala Vs. Larsen and Toubro Ltd., and the said officer is directed to take a decision on merits and in accordance with law after affording an opportunity of personal hearing to the authorized representative of the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
Govt. of India, North Block,
New Delhi.

2.The Commissioner of Central Excise,
Salem Division,
Anaimedu, Salem.

3.The Superintendent [Service Tax],
Salem-II Division,
Salem.

+1cc to Mr.N.NITHIANANDAM, Advocate, S.R.No.778
+1cc to Mr.S.SIVANANDAM, Advocate, S.R.No. 1055
+1cc to Mr.A.P.SRINIVAS Advocate, S.R.No. 951

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and
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GP(CO)
TR(07/02/2018)