



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.6020 of 2018

and

W.M.P. (MD) Nos.5888 and 5889 of 2018

Aravind Eye Hospital
(Run by the Govel Trust)
represented by G.Srinivasan,
President (Govel Trust),
K.K.Nagar,
Madurai-625 020.

... Petitioner

Vs.

Joint Commissioner,
Office of the Commissioner of CGST and Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai-625 002.

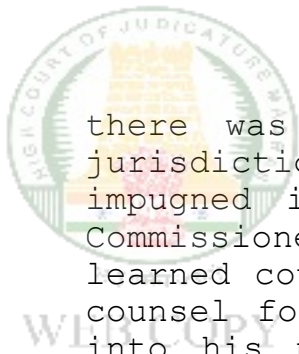
... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of order in Original No.MDU-ST-JC-23-2017 dated 20.12.2017 in File No.V/ST/15/130/2015-Adjn passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner	: Mr.S.Joseph Prabakar
For Respondent	: Mr.B.Vijay Karthikeyan

ORDER

The petitioner is a hospital providing eye care. It is also a recognized Post Graduate institute for Ophthalmology by Dr.M.G.R. Medical University, Chennai. The petitioner is also offering courses. The case of the department is that the petitioner is obliged to pay service tax under the category "Commercial Coaching Centre". According to the petitioner, some of the courses run by the petitioner fall under the health care category and that they have collected service tax from the student candidates and remitted in respect to those courses. Not satisfied with the stand taken by the writ petitioner, the Commissioner of Central Excise, Bibikulam, Madurai. issued show cause notice C.No.V/ST/15/130/2015 dated 19.10.2015. The petitioner offered their reply. In the meanwhile



there was a revision of the pecuniary limit, resulting in the jurisdiction being vested with the Joint Commissioner. The order impugned in this writ petition came to be passed by the Joint Commissioner on 22.02.2017. The said order is assailed by the learned counsel for the petitioner on several grounds. The learned counsel for the petitioner also complains that words have been put into his mouth and the petitioner's defence has been perversely construed.

2.I am of the view that the order impugned in this writ petition is to be set aside on a short ground. The authority which passes the final order ought to have issued the show cause notice also. In the present case the show cause notice was issued by the Commissioner while the final order was passed by the Joint Commissioner.

3.Since, the respondent authority did not issue the show cause notice, I am of the view that the order impugned in this writ petition is liable to be set aside. The matter is remitted to the file of the respondent who shall issue a fresh show cause notice and after holding an enquiry, pass orders in accordance with law.

4.I make it clear that I have not gone into or considered any of the other contentions raised by the learned counsel for the writ petitioner. All the defences are left open.

5.With this direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

+ 1 CC TO Mr.JOSEPH PRABAKAR, ADVOCATE IN SR No. 95846
+ 1 CC TO Mr.B.VIJAY KARTHIKEYAN, ADVOCATE IN SR No. 95872

PNN
TE/BK/SAR-4 : 26/12/2018 : 2P/3C

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