BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.14514 and 14515 of 2011 and
MP(MD)Nos.1 and 1 of 2011

Mathiarasan : Petitioner in W.P(MD)No.14514 of 2011
P.A.Najumudeen : Petitioner in W.P(MD)No.14515 of 2011

Vs.

1. Union of India,
   Rep. by its Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Deputy Commissioner of Central Excise,
   Central Revenue Buildings,
   No.5, V.P.Rathnasamy Road,
   Bibikulam,
   Madurai-625 002. : Respondents in both W.Ps.

PRAYER in W.P(MD)No.14514 of 2011: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent in show cause notice No.V/ST/30/308/2010 ST, dated 02.03.2011 and quash the same.

PRAYER in W.P(MD)No.14515 of 2011: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent in show cause notice No.151/2010 ST, dated 21.10.2010 and quash the same.

For Petitioners : Mr.J.Anandkumar
For Respondent No.1 : Mr.S.Jeyasingh
For Respondent No.2 in both W.Ps. : Mr.B.Vijay Karthikeyan

COMMON ORDER

The petitioners are the Contractors engaged in maintenance and repair of roads. The services are taxable under Section 65(64) of the Finance Act, 1994. The second respondent issued show cause notices dated 02.03.2011 and 21.10.2010 respectively for doing the works without taking service tax registration and without discharging the Service Tax Rules. By way of show cause notices, the petitioners were called for an explanation as to why a sum of Rs.2,45,023/- and Rs.11,15,020/- respectively, being service tax, should not be collected from them. Challenging the show cause notices, the present Writ Petitions have been preferred.

2. During the pendency of the Writ Petitions, the Hon'ble Division Bench of this Court in **W.A.(MD)Nos.1579 and 1741 of 2011, dated 16.12.2015 [K.O.Periyakaruppan vs. Union of India]**, had decided the similar issue. In view of the notification bearing No.25/2C12-Service Tax, dated 20.06.2012 issued by the Department of Revenue, Ministry of Finance, Government of India, exempting the services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, etc., from taxation, the Hon'ble Division Bench held that the exemption will operate retrospectively and quashed the show cause notices/demands.

3. The learned counsel for the petitioners would contend that the demands now made by way of impugned orders are also exempted from service tax with retrospective effect.

4. The learned counsel appearing for the first respondent and the learned counsel appearing for the second respondent would also concur and state that the notification is given retrospective effect and exempt service tax for the above mentioned services. In such event, the petitioner is not liable to pay service tax as it falls under exempted category.

5. In view of the above legal position and following the judgment of the Hon'ble Division Bench in W.A.(MD)Nos.1579 and 1741 of 2011, dated 16.12.2015, the impugned orders are set aside and the Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

+2 cc to Mr.B.Vijay Karthikeyan, Advocate, SR Nos.60746 & 60747
+1 cc to Mr.S.Jeyasingh, Advocate, SR No.60750

SML
T/JC/SAR-4 : 26/04/2018 : 2P/4C

Common Order made in
W.P(MD)Nos.14514 and 14515 of 2011
Dated: 11.04.2018