The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

WP.No.27262 of 2017

Dt: 03-01-2018

Between:

M/s.GMR Aerospace Engineering Limited
Hyderabad,
Rep. by its Authorized Signatory
K.Venkata Ramana

….Appellant

and

Union of India
Through the Secretary
Ministry of Commerce & Industry
New Delhi and 5 others

….Respondents

Counsel for the Appellant:	**Mr.S.Niranjan Reddy** **for Mr.Avinash Desai**
Counsel for respondent Nos.1, 3, 4 & 6:	**Mr.B.Narayan Reddy**
Counsel for respondent Nos.2 & 5:	**Mr.K.Lakshman,** **Asst. Solicitor General**

The Court made the following:

Order: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Writ Petition is filed for the following substantive reliefs:

> "i. to issue a writ, order or direction, more particularly in the nature of "Writ of Certiorari" quashing the Notifications No.17/2011-ST dated 1.3.2011, 40/2012-ST dated 20-06-2012 and 12/2013-ST dated 0100702013 as being ultra vires to the SEZ Act, 2005 to the extent it prescribes conditions for availing exemption from service tax for the services provided by the Developer of the SEZ Unit to the units located within the SEZ;
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> ii. in the alternative, it is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly in the nature of "Writ of Mandamus" directing that the Notifications No.17/2011-ST dated 1.3.2011, 40/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013 are not applicable to the extent it prescribes conditions for availing exemption from service tax for the services provided by the Developer of the SEZ Unit to the units located within the SEZ.
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> iii. It is therefore that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly in the nature of "Writ of Certiorari" calling for the records and quashing the Impugned Order dated 08.03.2017/06.04.2017 issued by the Respondent No.3 by declaring it to be passed without properly appreciating the statutory provisions, facts and submissions in the case and without appreciating the prevailing binding precedents and being arbitrary, illegal, unjust, contrary to law and without authority of law and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.
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> iv. It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly in the nature of "Writ of Certiorari" calling for the records and quashing the Impugned SCN dated 12.04.2017 issued by the Respondent No.5

by declaring it to be wholly without jurisdiction and also contrary to the statutory provisions, being arbitrary, illegal, unjust and without authority of law and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.

v. It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly in the nature of "Writ of Mandamus" directing the Respondents to grant exemption to the Petitioners from the payment of service tax in view of the substantive provisions of exemption provided under the Section 26 of the SEZ Act read with Rule 22 and 31 of the SEZ Rules or in the alternative grant exemption to the Petitioners from the payment of service tax by directing the Respondents to issue Form A-1 and Form A-2 retrospectively and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.

vi. It is therefore prayed that this Hon'ble Court may be pleased to issue a writ, direction or order more specifically in the nature of a "Writ of Prohibition" against the Respondents, its officers and assigns, preventing them from collecting service tax from the Petitioner No.2 on provision of services by it to the Petitioner No.1, and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case."

Elaborate arguments have been advanced by Mr.S.Niranjan Reddy, learned Senior Counsel appearing for Mr.Avinash Desai, learned Counsel for the petitioners.

The learned Senior Counsel has submitted that in the light of the statutory provision such as Section 26 (2) of the Special Economic Zone Act, 2005 (for short 'the Act') read with Rule 31 of the Rules framed thereunder, the petitioners are entitled to exemption from service tax as, admittedly, they are situated within the Special Economic Zone (SEZ) and that as Section 51 of the Act has an overriding effect over all other statutory enactments, the respondents cannot place reliance on certain Circulars issued under the Finance Act, 1994.

We are not inclined to adjudicate the Writ Petition on merits for the simple reason that the proceeding impugned in this Writ Petition is in the nature of a show cause notice and no final order determining the rights of the petitioners has been passed.

The learned Senior Counsel has fairly admitted that this is not a case of inherent lack of jurisdiction on the part of respondent No.5. Therefore, in our opinion, the issues raised by the petitioners need to be considered and a decision is required to be taken upon such consideration by respondent No.5.

The learned Senior Counsel was skeptical on respondent No.5 making an objective consideration in the light of the specific stand taken by respondent No.2 - Union of India as reflected in its counter-affidavit filed in this Writ Petition.

In our opinion, respondent No.2 was compelled to disclose its stand in the counter-affidavit in view of filing of the present Writ Petition by the petitioners challenging the show cause notice. However, if the petitioners are able to make out a case with reference to the provisions of the Act and their enforceability, respondent No.5 is bound to accept the same irrespective of the stand taken by respondent No.2 in its counter-affidavit.

Mr.K.Lakshman, learned Assistant Solicitor General, assured that the case of the petitioners would be objectively considered by respondent No.5, notwithstanding the specific stand taken by respondent No.2 in the counter-affidavit, and that a reasoned order will be passed by him after giving an opportunity of personal hearing to the representatives of the petitioners.

In the light of the above, while declining to interfere with the proceedings initiated by respondent No.5 under the impugned show cause notice, he is directed to consider the case of the petitioners with all objectivity as they deserve, after giving an opportunity of personal hearing to the representatives of the petitioners, pass a reasoned order, notwithstanding the stand taken by respondent No.2 in the counter-affidavit. As requested by the learned Senior Counsel appearing for the petitioners, the respondents shall not give effect to the order that may be passed by respondent No.5 for a period of four weeks, if the same is adverse to the interests of the petitioners, to enable them to seek appropriate relief against such order.

Subject to the above observations and directions, the Writ Petition stands disposed of.

As a sequel to disposal of the Writ Petition, WPMP.Nos.33856, 33857 and 54614 of 2017, filed by the petitioners for interim relief, are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 03-01-2018
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