IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.11583 & 11584 of 2007
and
M.P.No.1 of 2007 in W.P.No.11583 of 2007
and
M.P.No.1 of 2007 in W.P.No.11584 of 2007

M/s.Stahl India Pvt. Limited,
No.84, Vanapadi Road,
SIPCOT Industrial Complex,
Ranipet - 632403. ...Petitioner in both WPs

Vs

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

2. The Central Board of Excise & Customs,
   North Block, Ministry of Finance,
   Department of Revenue,
   Government of India, New Delhi.

3. The Commissioner of Central Excise,
   Chennai-III Commissionerate,
   No.121, Mahatma Gandhi Road,
   Nungambakkam, Chennai – 600034. ...Respondents in both WPs

PRAYER in WP.No.11583 of 2007: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records comprising show cause notice C.No.V/15/15(MGC)/05-STA III dated 30.01.2006 on the file of the 3rd respondent, and quash the same.

PRAYER in WP.No.11584 of 2007: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, declaring that Explanation to Sec.65(105) of the Finance Act, 1994, read with amended Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 coming into effect from 16.06.2005 is ultra vires Sections 64, 65, 66, 67 and 68 of the Finance Act, 1994 and therefore requires to be declared invalid.

For Petitioner : Mrs.P.Jayalakshmi
(in all WPs) for Mr.R.Karthikeyan

For Respondents : Mr.A.P.Srinivas, SSC
(in all WPs)

COMMON ORDER

Based on a decision of the Hon'ble Supreme Court in SLP Civil No.1893 of 2009 dated 14.12.2009, this Court in the case of Polyspin Exports Ltd. Vs. Union of India reported in 2011 (22) S.T.R.9 (Mad.), had held that the authorities have no power to levy the service tax prior to 17.04.2006 and the consequential show cause notices demanding service tax prior to the period are liable to be quashed.

2. In the instant case, the petitioner herein had challenged the constitutional validity of the Explanation to Section 65(105) of the Finance Act, 1994, read with amended Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 in W.P.No.11584 of 2007 and the show cause notice issued under Section 65, dated 30.01.2006 is under challenge in W.P.No.11583 of 2007.

3. The impugned show cause notice pertains to a demand contemplated in connection with the service agreement pertaining to the period 2002-2003, 2003-2004 and 2004-2005 respectively. In view of the decision of the Hon'ble Apex Court that the authorities have no power to levy the service tax prior to 17.04.2006, the show cause notice itself cannot be maintained.

4. It is further held in the aforesaid decision that after the introduction of Section 66A, the explanation to Section 65 (105) was also deleted and therefore, the show cause notice issued on the basis of explanation Section 65(105) of the Act is invalid.

5. Hence, the grievance of the petitioner vis-a-vis the relief sought for in these two writ petitions has been predominantly met. Hence, no further orders are required in the present writ petitions. Accordingly, both the writ petitions stand closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
    The Union of India,
    Ministry of Finance,
    Department of Revenue,
    New Delhi.

2. The Central Board of Excise & Customs,
    North Block, Ministry of Finance,
    Department of Revenue,
    Government of India,
    New Delhi.

3. The Commissioner of Central Excise,
    Chennai-III Commissionerate,
    No.121, Mahatma Gandhi Road,
    Nungambakkam,
    Chennai - 600034.

+2cc to Mr.R.Karthikeyan, Advocate, S.R.No. 49017 & 49018
+2cc to Mr.A.P.Srinivasan, Advocate, S.R.No. 49678 & 49870

W.P.Nos.11583 & 11584 of 2007
and
M.P.No.1 of 2007 in W.P.No.11583 of 2007
and
M.P.No.1 of 2007 in W.P.No.11584 of 2007

GJ II(CO)
GN(05/08/2019)