IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2019

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16131 of 2009
and
M.P.No.1 of 2009

Erode District Co-operative Printing Works Ltd.,
represented by its Special Officer,
Periyar Nagar,
Erode. .. Petitioner

Vs

1. Union of India,
   Represented by its Secretary,
   Ministry of Finance,
   New Delhi.

2. The Managing Director,
   Tamilnadu Housing Board,
   Nandanam, Chennai 600 035.

3. Executive Officer,
   and Administrative Officer,
   Tamilnadu Housing Board,
   Erode Division,
   Erode. ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the third respondent in his Letter No.R12/2705/87 dated 21.01.2009, issued following the second respondent's Memo No.BAS-1(1)10717/08 dated 21.01.2009 and quash the said proceedings.

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For Petitioner :Mr.M.Liagat Ali

For R1 :Mr.V.Sundareswaran, Senior Standing Counsel

For R2 and R3 :Mr.R.Bharathkumar, Standing Counsel

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ORDER

The demand of service tax on renting an immovable property is under challenge in the present writ petition. The vires of Section 65(105)(ZZZZ) of the Finance Act, is pending the decision of the Hon'ble Nine Judges Bench of the Hon'ble Supreme Court. In the meantime, there was an interim order passed by the Hon'ble Supreme Court clarifying that there is no stay of imposition of service tax under Section 65(105)(ZZZZ) of the Finance Act, insofar as the future liability towards service tax with effect from 1st January 2012 is concerned. Effectively, the respondents would be justified in claiming service tax for the future liability from 01.01.2012 onwards, in view of the interim order of the Hon'ble Supreme Court dated 06.01.2012.

2.The learned counsel for the petitioner would submit that the Hon'ble Supreme Court in the case of Union of India Vs. UTV News Ltd., reported in 2018(13)G.S.T.L.3(S.C.), while dealing with the very same issue observed that those matters should await the decision of the Hon'ble Nine Judges Bench and accordingly, the matter came to be adjourned sine die and therefore, the present writ petition also is required to be kept pending, awaiting the outcome of the decision of the Hon'ble Nine Judges Bench.

3.It is not the order of the Hon'ble Supreme Court that all matters in connection with the demand of service tax on renting immovable properties throughout the country, should be kept in abeyance pending the decision of the Hon'ble Nine Judges Bench of the Hon'ble Supreme Court. On the other hand, the Hon'ble Supreme Court in its interim order has gone to the extent of enabling the respondents to levy service tax on the future liability and as such if the present writ petition is kept pending, thereby disentitling the respondent from collecting the service tax for the future liability, it would go against the indent behind the interim order passed by the Hon'ble Supreme Court also.

4.In view of the same, it would be appropriate to grant liberty to the petitioner to work out his remedies, subject to the outcome of the decision to be taken by the Hon'ble Nine Judges Bench of the Hon'ble Supreme Court and the respondents also be given similar liberty to claim service tax on renting of immovable properties till such time. In the light of the above observation, this Court is not inclined to interfere with the impugned order in the present writ petition.

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5.Reiterating the liberty granted to both the parties, this writ petition is closed. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Ministry of Finance,
   New Delhi.

2. The Managing Director,
   Tamilnadu Housing Board,
   Nandanam, Chennai 600 035.

3. Executive Officer,
   and Administrative Officer,
   Tamilnadu Housing Board,
   Erode Division,
   Erode.

+1 CC to Mr. Liagath Ali, Advocate sr 60942.
+1 CC to Mr.V.Sundareswaran, Advocate sr 61431.
+1 CC to Mr.R.Bharathkumar, Advocate sr 61579.

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SP(22/08/2019)

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