IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.17644 of 2009
and
M.P.No.1 of 2009

M/s.SCM Garments Pvt.Ltd.,
57, VOC Nagar (South),
Valayankadu,
Tirupur - 641 603.
..Petitioner

Vs.

The Commissioner of Central Excise and Service Tax,
6/7 ATD Street,
Race Course Road,
Coimbatore - 641 018.
..Respondent

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the case in Show Cause Notice in C.No.V/TEL/15/18/2009-STC adjn-CEX//SCN No.07/2009(COMMR), dated 31.07.2009 issued by the respondent herein and to quash the same.

For Petitioner : Mr.T.Ramesh
For Respondent : Mr.K.S.Ramasamy CGSC

ORDER

The issue as to whether the respondent can demand Service Tax under the provisions of Section 73 (1) of the Finance Act, 1994 was under challenge before the Division Bench of this Court, in a batch of writ petition Nos.8124, 8125, 8202 to 8205, 3000, 8363, 9630, 9631, 15714, 35274, 50284 to 50286 of 2006, 2038, 2039, 21679 & 31288 of 2007, 22065 of 2008, 21309 & 21310 of 2007, 12437 & 12438 of 2008, 36553 to 36555 of 2006, 22579, 24493 to 24495 of 2007, 8765, 9832, 18692, 22905, 22918, 26418, 29982 of 2008, 17194 of 2009 and W.P. (MD) Nos. 7729 and 7730 of 2006, 7679 of 2007, 7734 to 7736 of 2006, 10612 of 2006 and W.P.No.8192 of 2012, by an order dated 19.08.2014, held as follows:

"These petitions raise a common question of applicability of service tax on alleged taxable services provided by a non-resident or a person located outside India, to a recipient in India.

2.The learned counsel for the parties state that the Special Leave Petition filed against the judgement of the Bombay High Court in Indian National Shipowners Association v. Union of India [2009 (13) STR 235], having been dismissed by the Hon'ble Supreme Court, service tax liability on any taxable service provided by a non-resident or a person located outside India, to a recipient in India, would arise with effect from 18.04.2005, i.e., after enactment of Section 66A of Finance Act, 1994.

3.As far as the period post 18.04.2006 is concerned, the views of the Delhi and Allahabad High Courts in (2007) 7 VST 43 (Orient Crafts Ltd., v. Union of India) and (2012) 25 STR 209 (Glyph International Ltd., v. Union of India) respectively favour the department. However, the Hon'ble Supreme Court has granted leave to appeal and the matters are yet to be listed for final disposal.

4.In the aforesaid facts and circumstances, we hold that the parties would be bound by the judgement to be rendered by the Hon'ble Supreme Court. However, in case of some aspects raised in these petitions are not addressed by the Hon'ble Supreme Court, the parites are at liberty to revive these petitions.

5.These writ petitions are closed in terms aforesaid. The interim orders would enure to the benefit of the parties till a decision is rendered by the Hon'ble Supreme Court. The parties will individually reply to the show cause notices sent to them, so that the proceedings are kept alive. No costs. Consequently, connected miscellaneous petitions are closed."

2. Since the issue involved in the batch of writ petitions, extracted above, is one and the same, this Court is also inclined to follow the same. Thereby the writ petition stands closed, with the similar observations. The parties would be bound by the judgement rendered by the Hon'ble Supreme Court detailed above.

3. Insofar as, the respondent's demand of service tax subsequent to 18.04.2006 is concerned, the petitioner granted liberty to give a reply to the show cause notice dated 31.07.2009, within a period of fifteen days from the date of receipt of a copy of this order.

4.Accordingly, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

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

True Copy

Sub-Assistant Registrar

Pns
To
The Commissioner of Central Excise and Service Tax,
6/7 ATD Street,
Race Course Road,
Coimbatore - 641 018.

+1 CC to Mr.K.S.Ramasamy, Advocate sr 63136.
+1 CC to Mr.T.Ramesh, Advocate sr 62907.

W.P.No.17644 of 2009

RGN(CO)
SP(29/07/2019)