IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25-01-2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.5010 of 2006
And
W.P.M.P.No.5378 of 2006

M/s.Prem Durai Spg.Mills Pvt Ltd.
Represented by its Managing Director Sri S.Duraisamy,
No.6, Prem Gardens,
Rajaji Nagar, P.N.Road,
Tiruppur-641 602. .. Petitioner

- Vs. -

1.Union of India,
Represented by its Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi - 110 001.

2.Central Board of Director Taxes,
Represented by its Secretary,
Government of India,
North Block,
New Delhi - 110 001.

3.The Income Tax Officer,
Company Ward,
Tiruppur. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring Sections 115 WA(2) and 115 WB(1) and 115 WB(2) of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 is ultra vires of Article 14, 19(1)(g) and 265 of the Constitution of India and is beyond the legislative competence of Parliament in so far as the petitioner is concerned.

For Petitioner : Ms.B.Priyanka for
Ms.R.Hemalatha

For Respondents : Mr.A.P.Srinivas

O R D E R

Heard Ms.B.Priyanka, learned Counsel appearing for the writ petitioner and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents.

2. The writ petitioner has come forward with this Writ Petition for issuance of Writ of Declaration to declare Sections 115 WA (2) and 115 WB (1) and 115 WB (2) of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 is ultra vires of Article 14, 19(1)(g) and 265 of the Constitution of India and as beyond the legislative competence of Parliament, in so far as the writ petitioner is concerned.

3. The learned counsel for the writ petitioner as well as the learned counsel for the Revenue submitted that the declaration sought for in this Writ Petition has been now seized of by the Hon'ble Supreme Court and similar Writ Petition has been transferred to the Hon'ble Supreme Court from the other High Courts as well.

4. Thus, considering the fact that the matter is now seized of by the Hon'ble Supreme Court, this Writ Petition can be disposed of with appropriate directions, leaving it open to the parties i.e. the writ petitioner as well as the Revenue to abide by the decision of the Hon'ble Supreme Court.

5. The learned counsel for the Revenue expressed an apprehension that in the event the Hon'ble Supreme Court uphold the provisions as being a valid piece of legislation, then the assessee like the writ petitioner should not plead that the action that may be initiated by the Department or in the process of being initiated, is barred by limitation.

6. The Revenue need not have any apprehension in this regard, as the Court proposes to safeguard the interest of the Revenue by passing the following orders:

> "The writ petitioner is directed to abide by the decision of the Hon'ble Supreme Court where the challenge to the impugned provisions are pending. It is made clear that in the event the Hon'ble Supreme Court upholds the impugned legislation and the Department initiates action or proceeds with the action already initiated, the writ petitioner/assessee is not entitled to

plead limitation and the period during which this Writ Petition is pending as well as the period till the matter is decided by the Hon'ble Supreme Court, shall stand excluded for computation of limitation".

7. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn
To

1.The Secretary,
Union of India,
Ministry of Finance,
Government of India,
North Block,
New Delhi - 110 001.

2.The Secretary,
Central Board of Director Taxes,
Government of India,
North Block,
New Delhi - 110 001.

3.The Income Tax Officer,
Company Ward,
Tiruppur.

A.SK(15/02/2019)

WP No.5010 of 2006