IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.3074 to 3076 of 2008
and
M.P.No.1 of 2008 in W.P.No.3075 of 2008
and
M.P.Nos.2 & 2 of 2008 in W.P.Nos.3074 & 3076 of 2008

M/s.Orient Express,
Rep. by its Managing Partner
Mr.Moham M.Sreenivas
26-B, Jawaharlal Nehru Salai,
Ekkaduthangal,
Chennai - 600097. ...Petitioner in all W.Ps.

Vs

1. Union of India,
Rep. by its Secretary to Government,
Ministry of Finance,
North Block, New Delhi.

2. The Income Tax Officer,
Ward-IV(1), Ann Bldg, 5th Floor,
No.121, Mahatma Gandhi Road,
Chennai - 600034. ...Respondents in all W.Ps.

Prayer in W.P.No.3074 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records comprised in the assessment order in respect of the PAN GIR No. AAAFO0565A for the assessment year 2004-2005 dated 18.12.2006 on the files of the 2nd respondent and the consequential demand notice u/s 156 of the Income Tax Act, 1951 dated 18.12.2006.

Prayer in W.P.No.3075 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the following conditions and restrictions introduced vide Section 4 - Amendment of Section 80HHC(3)(i), Income Tax Act, 1961, introduced vide Taxation Laws Amendment Act, 2005 (Act 55 of 2005) dated 28.12.2005 -
"(a) he had an option to choose either the duty drawback or the duty entitlement pass book scheme, being duty remission scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under duty entitlement pass book scheme, being duty remission scheme;
(c) he had an option to choose either the duty drawback or the duty free replenishment certificate, being duty remission scheme; and
(d) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowance under the duty free replenishment certificate, being duty remission scheme."

as ultra vires offending Article 14, Article 19(1)(g) and Article 300-A of the Constitution of India and Section 80HHC(3)(i) of the Income Tax Act, 1961.

Prayer in W.P.No.3076 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records comprised in the assessment order in respect of the PAN GIR No. AAAFO0565A for the assessment year 1999-2000 dated 11.12.2006 on the files of the 2nd respondent and the consequential demand notice u/s 156 of the Income Tax Act, 1951 dated 11.12.2006.

For Petitioner (in all W.Ps)	:	Mrs.Jayalakshmi for Mr.R.Karthikeyan
For Respondents (in all W.Ps)	:	Mrs.Hema Muralikrishnan, SSC

COMMON ORDER

The learned counsels appearing on either side do not dispute the fact that the issue involved in these Writ Petitions is covered by a decision of the Hon'ble Supreme Court, in the case of Commissioner of Income-tax Vs. Avani Exports reported in [2015] 58 Taxmann.com 100 (SC), wherein, the Hon'ble Supreme Court, considered the validity of the amendment to Section 80 HHC (3) of the Income Tax Act, 1961, in which, third and fourth proviso to Section 80HHC were inserted by Taxation Laws (Second Amendment) Act, 2005, with retrospective effect from 1-4-1998. By virtue of the said amendment, two categories of exporters, viz., those, whose exports were less than Rupees Ten crores, and those exporters, whose export turnover was more than Rupees Ten crores. It provided that, deduction in respect of exporters having a turnover of more than Rupees Ten crores would be available only if they had satisfied two conditions stipulated in third and fourth proviso to the said amendment. All the exporters, including assessees, contended that these conditions are severable, and, therefore, these conditions should be declared as ultra vires. The High Court accepted the contentions of the exporters/assessees and quashed the impugned amendment only to extent that the operation of said Section could be given effect from the date of amendment, and not in respect of earlier assessment years. Accordingly, the Hon'ble Supreme Court confirmed the view taken by the High Court, and held that the conditions stipulated in third and fourth proviso to Section 80HHC of the Income Tax Act, would not operate retrospectively, and cases of exporters, having a turnover below Rupees Ten crores, and those above Rupees Ten crores, would be treated similarly during the period prior to amendment.

2. In the instant cases, the assessments pertain to the years 1999-2000 and 2004-2005, i.e., prior to the amendment. Accordingly, by applying the ratio in the case of Commissioner of Income-tax Vs. Avani Exports (referred supra), the impugned orders of assessment dated 18.12.2006 and 11.12.2006, are quashed, insofar as it relates to the claim on deduction under Section 80HHC of the Income Tax Act.

3. In the result, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

hvk Sub Assistant Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Finance,
North Block, New Delhi.

2. The Income Tax Officer,
Ward-IV(1), Ann Bldg, 5th Floor,
No.121, Mahatma Gandhi Road,
Chennai - 600034.

+3 ccs to M/s.P.Jayalakshmi, Advocate, S.R.Nos.58858 to 58860
+3 ccs to M/s.Hema Muralikrishnan, Advocate,
S.R.Nos.59556 to 59558

W.P.Nos.3074 to 3076 of 2008
and
M.P.No.1 of 2008 in
W.P.No.3075 of 2008
and
M.P.Nos.2 & 2 of 2008 in
W.P.Nos.3074 & 3076 of 2008

SS(CO)
SSM(26/08/2019)