IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.25881 of 2010

The Thyagaraya Nagar Social Club
Represented by its Honorary Secretary
P.S.Ashok

...Petitioner

--Vs--

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

2.The Commissioner of Service Tax,
Office of the Commissioner of Service Tax,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai 600035

3.The Additional Commissioner,
Office of the Additional Commissioner of Service Tax,
MHU Complex, 692, Anna Salai
Nandanam, Chennai 600035

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, calling for the records in Order in Original No.96/2010 dated 31.08.2010 in File C.No.IV/9/529/2008 STC/ADJ (read with corrigendum dated 27.10.2010) passed by the 3rd respondent, confirming demand of Service Tax of Rs.11,75,850/- (including cess) under proviso to Section 73(1) of the Finance Act, 1994 & Interest of Rs.12,475/- under Section 75 of the Finance Act, 1994 and imposing penalty of Rs.18,000/-under Section 70 of the Finance Act, 1994 and levying penalty of Rs.11,75,850/- under Section 78 of the Finance Act, 1994 and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.K.S.Ramasamy

O R D E R

The petitioner has challenged an order of assessment dated 31.08.2010, fastening liability to service tax on the basis that commercial renting of the club premises is liable for service tax in terms of Section 65(105)(zzze)of the Finance Act, 1994.

2. The petitioner raises three main arguments, firstly to the effect that statutory provision has itself been held to be ultra vires the Constitution of India, secondly, that it has not collected service tax from its members and thirdly that the impugned order is barred by limitation.

3. In support of the first submission, decisions of the Ranchi Bench of the Jharkhand High Court in Ranchi Club Ltd. Vs. Chief Commissioner of Central Excise and Service Tax, Ranchi Zone (212 (26) S.T.R. 401) and Benches of the Gujarat High Court in Sports Club of Gujarat Ltd. Vs. Union of India ((2013) 31 S.T.R.645) and Federation of Surat Textile Traders' Association Vs. Union of India ((2017) 52 S.T.R. 478), are circulated, that have declared the provision of Section 65(105)(zzze) ultra vires the Constitution of India.

4. Mr.Ramaswamy, learned counsel appearing for the revenue states that the revenue has not accepted the decision in the case of Ranchi Club (supra) and a petition to Special Leave has been filed before the Supreme Court.

5. In Chief Commissioner of Central Excise and Service Tax, Ranchi and Others Vs. Ranchi Club Ltd., (Civil Appeal No.7497 of 2012), the Supreme Court has noted that the issue involved, relating to vires of Section 65(105)(zzze) has been referred to a larger Bench in the case of State of West Bengal and Others Vs. Calcutta Club Ltd. ((2017) 5 SCC 356) (Civil Appeal No.4184 of 2009). The appeal by the revenue in the case of Ranchi Club Ltd.(supra) has been directed to be placed along the civil appeal in the case of Calcutta Club (supra).

6. As on date, the position is thus, clear to the effect that the provisions of Section 65(105)(zzze) have been held to be ultra vires the Constitution, there being no order of stay granted by the Supreme Court. The impugned order thus has no legs to stand. Any amount collected pursuant to the demand raised in the impugned order of assessment is also without the authority of law and is liable to be refunded forthwith.

7. In view of the above, this writ petition is allowed. However, since the matter is still pending before the Supreme Court of India, liberty is granted to the respondent to revive the order of assessment and to the petitioner to revive this writ petition, since other grounds have been raised as well, subsequent to the delivery of judgment in this matter by the Supreme Court, if the parties so desire. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Service Tax,
Office of the Commissioner of Service Tax,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai 600035

3.The Additional Commissioner,
Office of the Additional Commissioner of Service Tax,
MHU Complex, 692, Anna Salai
Nandanam, Chennai 600035

+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No. 80089
+1cc to Mr.Joseph Prabhakar, Advocate, S.R.No. 80501

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MR(CO)
GN(27/11/2019)