IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.12.2019
CORAM
THE HON'BLE MR. JUSTICE C. SARAVANAN
W.P. No.36582 of 2005
(OP.No.257 of 2003)

M/s.Johnson Lifts Pvt ltd
R-8C East Main Road,
Anna Nagar, Western Extension,
Chennai - 600 101. ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary to the Govt.
Commercial Taxes & Hindu Religious
Endowment, Government of Tamil Nadu
Fort St.George,
Chennai - 9.

2. Commercial Tax Officer
Koyambedu Assessment Circle,
Maduravoil,
Chennai - 95. ... Respondents

This above Petition was originally filed before the Tamil Nadu Taxation Special Tribunal and numbered as O.P.No.257 of 2003. The said O.P was filed to declare Section 2(1)(aa) to the Tamil Nadu Additional Sales Tax Act, 1970 as introduced by Amendment Act 23 of 2002 as ultra-virus the Constitution of India and strike down the same. Consequent to abolition of the above Tribunal, the said O.P was transferred to this Court and renumbered as W.P.No.36582 of 2005 (this Writ Petition).

For Petitioner : M/s.K.Vaitheeswaran
For Respondents: Mr.A.N.R.Jayaprathap,
Sr.Standing Counsel for R1 and R2.

ORDER

The above petition was originally filed before the Tamil Nadu Taxation Special Tribunal and numbered as O.P.No.257 of 2003. The said O.P was filed to declare Section 2(1)(aa) to the Tamil Nadu Additional Sales Tax Act, 1970 as introduced by Amendment Act 23 of 2002 as ultra-virus the Constitution of India. Consequent to abolition of the above Tribunal, the said OP was transferred to this Court and renumbered as W.P.No.36582 of 2005.

2.Heard learned counsel for the petitioner and the respondents. The prayer to declare Explanation V to Section 2(1)(aa) to the Tamil Nadu Additional Sales Tax Act, 1970 as introduced by Amendment Act 23 of 2002 has been answered in favour of the petitioner by a Division Bench of this court in The State of Tamil Nadu and another Vs. M/s.Taher Ali Industries and Projects Ltd., 2016 SCC Online Mad 9288 in W.A.(MD).No.174 of 2013.

3.The Division Bench there upheld the order dated 27.09.2011 of the learned Single Judge in W.P.(MD).No.1831 of 2007 and had declared the aforesaid provision as ultra virus Constitution of India and beyond legislative competence of the state legislature. Therefore, this writ petition deserves to be allowed.

4.The petitioner had also filed petitions to stay notices dated 27.01.2003 issued to the petitioner seeking to demand tax for the respective assessment years 2001-2002 and assessment year 2002-2003. These notices were ostensibly issued in the light of the aforesaid provisions of the said Act which have been now declared to be ultra virus.

5.As the issue has been answered by a Division Bench of this Court, I am of the view that the petitioner should be relegated file a reply to the respective notices dated 27.01.2003 before the 2nd respondent. Petitioner may, therefore, file a reply within a period of 30 days from date of receipt of a copy of this order to the respective notices.

6.The 2nd respondent shall hear the petitioner and pass a speaking order within a period of 60 days from the date of receipt of a copy of this order. Needless to state, while passing the speaking order, the decision of this court in The State of Tamil Nadu and another Vs. M/s.Taher Ali Industries and Projects Ltd., 2016 SCC OnLine Mad 9288 in W.A.(M.D).No.174 of 2013 shall be kept in mind by the 2nd respondent.

7.The writ petition stands disposed with the above observations. No cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh/jen

To

1.The State of Tamil Nadu
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Commercial Taxes & Hindu Religious
Endowment, Government of Tamil Nadu
Fort St.George,
Chennai - 9.

2. Commercial Tax Officer
Koyambedu Assessment Circle,
Maduravoil,
Chennai - 95.

+1cc to M/s.K.Vaitheeswaran, Advocate sr.105417
+1cc to Government Pleader(Taxes) sr.106588

W.P.No.36582 of 2005

rr(co)
nr 17/02/2020