IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO.27541 OF 2011
AND
M.P. NO. 1 OF 2011

M/s.Shuganth Telecom Contractor
rep. By its Managing Director
319, Makkiripalayam
Sowdhapuram 638 008
Tiruchengode Taluk, Namakkal Dt. .. Petitioner

\- Vs -

1. The Addl. Commissioner
   O/o The Commissioner of Customs
   Central Excise & Service Tax
   1, Foulkes Compound, Anai Medu
   Salem 636 001.

2. M/s.Bharat Sanchar Nigam Ltd.
   Rep. By its General Manager
   Thanjavur 613 007. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the first respondent in C. No.V/SFCS/15/25/2010-ST.Adj/Order Sl No.24/2011 (ADC), quash the order dated 30.08.2011 passed therein, besides directing the 2nd respondent, who is a Government of India Enterprise to remit the applicable taxes in respect of the same transaction in the event in the event of the tax liability being affirmed at the hands of the petitioner.

For Petitioner : Mr. B.Raveendran
For Respondents: Ms.Hema Muralikrishna for R-1
Mr. T.Ravikumar for R-2



ORDER

When the matter is taken up for hearing, learned counsel appearing for the petitioner submits that the issue has been settled by the Appellate Tribunal vide order dated 7.3.2018 in ST/Misc./41378/2017 and ST/323/2011 (M/s.Indian Telephone Industries Ltd. - Vs - Commissioner of GST & Central Excise, Chennai South Commissionerate). Learned counsel for the petitioner drew the attention of this Court to paras 2 to 6 of the order abovesaid, passed by the Appellate Tribunal and submitted that the issue raised in this writ petition stands directly answered by the Appellate Tribunal in the aforesaid decision and, therefore, the petitioner is entitled to succeed on the basis of the above ruling of the Tribunal.

2. For better appreciation of the case, para2 2 to 6 of the order in Indian Telephone Industries case (supra) is quoted hereunder :-

> ”2. On behalf of the appellant, ld. Counsel Shri Raghavan Ramabhadran submitted that the issue whether the appellant is liable to pay service tax on the activity of trenching and laying telephone cables is clarified by Board's Circular No.123/5/2010-TRU dated 24.5.2010 wherein it has been held that such activities would not fall under taxable category of Erection, Commissioning and Installation Services. Further, in the decision of Commissioner of Central Excise, Chandigarh - Vs - Rajeev Electrical Works (2014 (18) STR 705 (P&H)), the Hon'ble High Court has held that laying the pipes in wall/roof/floor for crossing of wires, fixing the junction box, fixing the cables trays to lay the cables, digging the earth to lay the cables and digging the earth pits for earthing, etc., would not amount to installation of plant, commissioning and is not leviable to service tax under Erection, Commissioning and Installation Services. Similar view was taken by the Tribunal in the case of Upadhaya Enterprises - Vs - Commissioner of Central Excise, Jaipur (2011 (22) STR 606 (Tr. Del.).
>
> 3. The ld. AR Shri K.P.Muralidharan reiterated the findings in the impugned order.
>
> 4. Heard both sides.
>
> 5. The issue stands covered by the clarification issued vide Board's Circular cited supra which clarified that laying cables under or alongside roads is not a taxable service. In the decisions cited supra, the Tribunal as well as the Hon'ble High Court has given categorical finding that such activities are not taxable under Erection, Commissioning and Installation Services.
>
> 6. following the same, we find that the

demand cannot be sustained. The impugned order is set aside and the appeal is allowed with consequential relief, if any. The miscellaneous application filed by Revenue for change of cause title is allowed."

3. Learned counsel appearing for the respondent attempted to make a distinction to the effect that this order was not available on the date when the impugned order was passed. In any event, when the matter is taken up by this Court today, the order of the Appellate Tribunal is brought to the notice of this Court, which this Court cannot simply ignore.

4. Accordingly, following the decision in Indian Telephone Industries case (supra), this writ petition is allowed and the order passed by the 1st respondent is hereby set aside. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

GLN
To
1. The Addl. Commissioner
O/o The Commissioner of Customs
Central Excise & Service Tax
1, Foulkes Compound, Anai Medu
Salem 636 001.

2.The General Manager
M/s.Bharat Sanchar Nigam Ltd.
Thanjavur 613 007.

+1cc to Mr.B.Raveendran , Advocate SR.No.27502
+1cc to Mr.T.Ravikumar , Advocate SR.No. 27612

W.P. NO. 27541 OF 2011

A.SK(08/05/2019)