IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1861 of 2019

The Commissioner of Service Tax,
(now redesignated as)
Principal Commissioner of GST & CE,
Chennai North Commissionerate,
121, Nungambakkam High Road,
Chennai 600 034. ... Appellant/Respondent

Versus

M/s.PRR Travels,
No.280, N Block,
Anna Nagar East,
Chennai 600 102. ... Respondent/Appellant

Prayer: Civil Miscellaneous Appeal filed under Section 35 of the Central Excise Act, 1944 against the Final Order No.41884 of 2018 dated 27.6.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, as against the Order dated 22/02/2010 passed by the Commissioner of Central Excise, Chennai in order-in Original No.26/10.

For appellant : Ms.Hema Muralikrishnan,
Senior Standing Counsel

For Respondent : No appearance.

J U D G M E N T

(Delivered by Dr.VINEET KOTHARI, ACJ)

This Civil Miscellaneous Appeal has been filed by the Revenue, calling in question the correctness of the Final Order No.41884 of 2018 passed by the CESTAT, Chennai Bench, Chennai, on 27.6.2018, by raising the following substantial questions of law:

"(i) Whether in the facts and circumstances of the case, the Tribunal is right and justified in allowing the appeal of the assessee by holding that the issue was settled in favour of the assessee by the Uttarkhand High Court in the case of CCE v. Sachin Malhotra, 2015 (37) STR 684 which held that the provisions of the Rent a Cab Operator Scheme have to be read into the provisions of the Finance Act, 1994 for the purpose of levy of Service Tax under a rent-a-cab scheme, when this Hon'ble Court has in the case of secy. Fedem. of Bus Operators Assn. of T.N. v. Union of India, reported in 2001 (134) E.L.T. 618 = 2006(2) S.T.R. 411 (Mad.) held that the scope of amended provision, which is as per Section 65(38), has been widened by deleting the requirement of holding a licence under Rent-a-Cab Scheme, 1989 and that under the amended provision any person engaged in business of renting of cabs becomes a rent-a-cab scheme operator?

(ii) Whether the Tribunal is right in overlooking the binding judgment of the jurisdictional High Court and following the judgment of the Uttarkhand High Court in preference to the judgment of this Court?

(iii) Is not the Tribunal wrong in not even looking into the judgment of the Supreme Court reported in 2016(44) STR J279 and the judgment of the Allahabad High Court in the case of Anil Kumar Agnihotri Vs. CCE reported in 2018(10) GST 28?

(iv) Whether the Tribunal was right in not even discussing the provisions of the Act and the amendments to the same and the effect of the amendments?"

2. When the matter is taken up for admission, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed, as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssk.
To:

1. The Commissioner of Service Tax,
(now redesignated as)
Principal Commissioner of GST & CE,
Chennai North Commissionerate,
121, Nungambakkam High Road,
Chennai 600 034.

2. Customs, Excise and Service Tax
Appellate Tribunal,
Chennai Bench, Chennai.

3.The Commissioner,
Officer of the Commissioner of Central Excise,
Nandanam, Chennai-35.

+1cc to Mrs.Hema Muralikrishnan, Advocate Sr.89523

C.M.A.No.1861 of 2019

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srg 03/12/2019