IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.3.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT APPEAL NO.672 OF 2019 & CMP.NO.5489 OF 2019

Shree Vijayalakshmi Charitable
Trust, rep.by its Managing
Trustee A.Senthil Kumar ...Appellant/Petitioner

Vs

1.Union of India, rep.by its Secretary
to Government of India, Finance
Department, New Delhi-110001.

2.Central Board of Excise and Customs,
Department of Revenue, Ministry of
Finance, New Delhi-110008.

3.The Commissioner of Central Excise
and Service Tax, 6/7, ATD Street,
Race Course Road, Coimbatore-18.

4.The Assistant Commissioner of
Customs, Central Excise and Service
Tax, Coimbatore III Division,
Coimbatore. ...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 25.10.2018 passed in W.P.No.34005 of 2014.

Prayer in W.P.No.34005 of 2014:

Writ of declaration declaring that the transactions involved in terms of the said two agreements is not service much less the taxable service and it is also not provided by the petitioner trust consequently the very levy and collection of service tax under VCES Scheme is unlawful and opposed to constitutional propriety and further forbearing the 4th respondent not to insist for the payment of balance amount as per his letter No. IV/16/104/ 2013-ST (VCES) dated 7.11.2014 and pass such other further orders as may be deemed fit in the facts and circumstance of the case and render justice.

For Appellant : Mr.Raghavan Ramabadran

For Respondents : Mr.A.P.Srinivas, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.Raghavan Ramabadran, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the respondents.

2. This appeal is directed against the order dated 25.10.2018 in W.P. No.34005 of 2014.

3. The said writ petition was filed by the appellant herein seeking a Writ of Declaration that the transactions involved in terms of the said two agreements were not services much less taxable services and it was also not provided by the appellant trust and that the consequential levy and collection of service tax under the Voluntary Compliance Encouragement Scheme (VCES) was unlawful and opposed to Constitutional propriety and for a further direction to forbear the fourth respondent not to insist for the payment of balance amount as per their letter dated 07.11.2014.

4. The learned Single Judge, by the impugned order, dismissed the said writ petition on the ground that the appellant did not have any cause of action to file the same.

5. We are in full agreement with the ultimate conclusion arrived at by the learned Single Judge. Furthermore, the question of granting a declaratory relief at this juncture does not arise and more so, when the appellant filed an application under the VCES, 2013.

6. The learned counsel for the appellant has drawn the attention of this Court to the letter dated 16.12.2013 addressed by them to the Commissioner of Central Excise and Service Tax. A reference is also made to the last paragraph of the said letter wherein the appellant stated that they were paying 50% of the amount under the VCES without prejudice to their claim that the receipts from Mr.M.Palanisamy were not taxable for the reasons stated by them in their letter. This submission made in the letter dated 16.12.2013 is self serving. Once an applicant files an application under the VCES, it presupposes that it is a voluntary exercise by opting under the scheme. Therefore, the stand taken by the appellant that they were pressurized to file an application is a self serving statement.

7. Be that as it may, the appellant cannot be stated to be aggrieved by the communication dated 07.11.2014. Furthermore, as rightly pointed out by the learned Senior Standing Counsel for the respondents, the appellant has not challenged the said proceedings on any valid grounds, but only sought for a declaratory relief. Apart from being premature, there is no cause of action for the appellant to file the writ petition and the prayer sought for is thoroughly misconceived.

8. For the above reasons, the writ appeal stands dismissed. However, it is made clear that it is open to the appellant to take whatever defenses available to them under law in the event the Department proceeds further in the matter. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of India, Finance Department, New Delhi-
110001.

2.The Central Board of Excise and Customs, Department of Revenue, Ministry
of Finance, New Delhi-110008.

3.The Commissioner of Central Excise and Service Tax, 6/7, ATD Street,
Race Course Road, Coimbatore-18.

4.The Assistant Commissioner of Customs, Central Excise and Service Tax,
Coimbatore III Division, Coimbatore.

+1cc to M/S.Lakshmi Kumaran, Advocate sr.25188

WA.No.672 of 2019 &
CMP.No.5489 of 2019

sj[co]
srg 10/04/2019