IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7109 of 2019
and WMP No.7830 of 2019

M/s.GM Infinite Dwelling (India) Private Limited,
(Rep. by its Managing Director,
Sri. Gulam Mustafa) ... Petitioner

vs.

1. Union of India,
Through the Secretary,
Ministry of Finance, North Block,
New Delhi - 110 001.

2. The Deputy Director,
Directorate General of Goods and Services Tax,
Intelligence, Hosur Regional Unit,
SRM Tower, 1st and 2nd Floor
No.222/A1, Shanthi Nagar,
100 Feet Road, Near RC Church,
Hosur - 635 109. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of declaration, declaring that Section 174 of Central Goods and Service Tax Act 2017, as ultra vires of Section 19 of the Constitution (One hundred and First amendment) Act 2016 and articles 246 A, 269A and 279A of the Constitution of India and therefore, unforceable and of no effect in so far as the petitioner herein is concerned.

For Petitioner : Mr.J.Shankar Raman

For Respondents : Mr.V.Sundareswaran (for R1& R2)

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

On 13.03.2019, we passed the following order.

"Petitioner has sought for a writ of declaration, declaring that Section 174 of the

Central Goods and Service Tax Act, 2017, as ultra vires, to Section 19 of the Constitution (One Hundred and First Amendment) Act, 2016 and Articles 246 A, 269 A and 279 A of the Constitution of India and therefore, unenforceable and has no effect, in so far as the petitioner is concerned.

2. Inviting the attention of this Court to Section 19 of the Constitution (One Hundred and First Amendment), Act, 2016, Mr.J.Shankar Raman, learned counsel for the petitioner submitted that after the said amendment, no action can be instituted, continued or enforced and therefore, no investigation inquiry (including scruting and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears can be made.

3. According to him, Constitution of India was amended on 8th September 2016 and reading of Section 19 of the Constitution Amendment Act, would make it clear that no action can be taken by the competent authority until expiration of one year from such commencement of the Act, whichever is earlier.

4. He therefore, submitted that investigation undertaken by the Department, after the expiry of one year from the commencement of Amendment, is not valid and that therefore, Section 174 is inconsistent with the constitutional amendment and for the above said reasons, sought for a declaration as prayed for.

5. We have heard Mr.J.Shankar Raman, learned counsel for the petitioner.

6. Section 19 of the Constitution One Hundred and the first Amendment Act, 2016, dated 8th September 2016, reads thus:-

> "Transitional Provisions - Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier."

7. Section 174 of the GST Law Manual, reads thus:-

Repeal and Saving – (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2). The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or Section 173 shall not -

a. revive anything not in force or existing at the time of such amendment or repeal; or

b. affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts.

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said Notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended act or repealed Acts; or

(e). After any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears of remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended act or repealed Acts as if this Act had not come into force an the said Acts had not been amended or repealed.

3. The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

8. Before the introduction of GST, service tax was in regime. What is envisaged in Section 19 (Transitional provisions) is, "in consistency with the provisions of the Constitution", as amended by the Constitution (One Hundred and First Amendment) Act, 2016, dated 8/9/2016. Service Tax is now replaced with GST. There is no inconsistency with the provisions of the Constitution. We are not in agreement with the submission of the learned counsel for the petitioner. That apart, Section 174 of the GST Law Manual, starts with an opening sentence "Save as otherwise provided in this Act, on and from the date of commencement of this Act."

9. Section 174 (e) comprises of two parts, viz., (i). proceedings already instituted, continued or enforced and (ii) Proceedings to be instituted. Thus, action under Section 174 of the GST Manual taken has been saved and there is no prohibition under the said Act, for investigation to be instituted.

10. When the above legal position was pointed out to the learned counsel for the petitioner, he seeks time to get instructions from the petitioner as to the further course of action.

11. Post on 14/3/2019 in the motion list."

2. When the matter came up for further hearing, Mr.J.Shankar Raman, learned counsel for the petitioner seeks permission to withdraw the instant writ petition with liberty to challenge the order on the grounds of territorial jurisdiction. He has also made an endorsement to that effect.

3. In view of the above submission and the endorsement so made, permission is granted. Writ petition is dismissed as withdrawn, with liberty as prayed for. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Union of India,
Ministry of Finance, North Block,
New Delhi - 110 001.

2. The Deputy Director,
Directorate General of Goods and Services Tax,
Intelligence, Hosur Regional Unit,
SRM Tower, 1st and 2nd Floor
No.222/A1, Shanthi Nagar,
100 Feet Road, Near RC Church,
Hosur - 635 109.

+1 cc to Mr.V.Sundareswaran, Advocate, S.R.No.24141

W.P.No.7109 of 2019
and WMP No.7830 of 2019

RV(CO)
SSM(23/04/2019)