IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.4353 of 2012
and
MP.No.1 of 2012

Sri T. Arivalagan ...Petitioner

Vs

The Commissioner of Central Excise (Appeals)
No.26/1, Mahatma Gandhi Road,
Nungambakkam
Chennai-600034 ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in the impugned proceedings vide interim order No.13/2012(M-III) ST to 15/2012 (M-III) ST dated 27.01.2012 under Section 35F of Central Excise Act in A.no.144 of 2011(M-III) ST and quash the same.

For Petitioners : Mr.K.Vaitheeswaran

For Respondents : Mr.T.Promod Kumar Chopda

O R D E R

The interim orders passed in the case of three assessees, in which the petitioner is one among them, directing to pre-deposit the entire service tax demanded within stipulated time, is under challenge in the present writ petition.

2. Today, when the matter is called the learned counsel for the petitioner produced a copy of an order passed in W.P.No.5243/2012 dated 20.07.2012, in which one among the assessees, namely K.Abdullah, who is also a part of the impugned common order in the present writ petition, had challenged the order and the writ petition came to be allowed by this Court, by observing as follows:

> 5. Heard the learned counsel on either side and perused the documents available on record. Section 97 (1), which was inserted by Finance Act, 2012 No.23 of

2012 reads as follows:-

> "97. (1) Notwithstanding anything contained in Section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June 2005 to the 26th day of July, 2009 (both days inclusive)".

Since the period involved in the writ petition is 16.06.2005 to 30.09.2008 by virtue of the above said amendment, the petitioner is exempted from service tax. In the light of the above amendment the interim order No.13/2012 (M-III) ST to 15/2012 (M-III) dated 27.01.2012 under Section 35F of Central Excise Act in A.No.174 of 2011 (M-III) ST passed by the first respondent is quashed).

3. In view of the aforesaid order, this Court is of the view that, the petitioner will also be entitled for the same relief.

4. In the light of the orders of this Court passed in W.P.No.5243/2012 dated 20.07.2012, the impugned interim order No.13/2012(M-III) ST to 15/2012(M-III) ST dated 27.01.2012 under Section 35F of Central Excise Act in A.No.144 of 2011(M-III) ST, in so far as it relates to the petitioner herein namely, Sri T. Arivalagan, is quashed and the writ petition stands allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

ska

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
The Commissioner of Central Excise (Appeals)
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600034

+1cc to Mr.K.Vaitheeswaran, Advocate, SR.No.67964
+1cc to Mr.T.Pramod Kumar Chopda, Advocate, SR.No.67996

W.P.No.4353 of 2012
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Kak(22/10/2019)