BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD)(MD)Nos.132 of 2011 and 398 of 2012
and
M.P(MD)Nos.1 of 2011 and 1 of 2012

1)Union of India,
Rep. by Commissioner,
Central Excise,
Trichy.

2)The Joint Commissioner,
Central Excise,
Trichy.

3)The Superintendent,
Central Excise,
Head Quarters Anti-Evasion,
Service Tax Range,
Trichy. ... Petitioners in CRP.132/11

1)Union of India,
Rep. by Commissioner,
Central Excise,
Williams Road,
Cantonment,
Trichy-1.

2)The Assistant Commissioner,
Central Excise,
Williams Road,
Cantonment,
Trichy-1.

3)The Superintendent,
Central Excise,
Service Tax Range,
Williams Road,
Cantonment,
Trichy-1. ... Petitioners in CRP.398/12

vs.

M/s.Educational Research Centre (ERC),
Rep. by its Proprietor Krishna. ... Respondent in CRP.132/11

1)G.K.Colour Lab,
Rep. by its Managing Partners,
1.G.D.Raghu
2.G.D.Murali
2)G.D.Raghu
3)G.D.Murali
4)The State of Tamilnadu,
Rep.by its District Collector,
Trichy-1.
5)The Tahsildar,
Tiruchirappalli Taluk,
Town Hall,
Trichy-2. ... Respondents in CRP.398/12

Prayer in CRP.132/2011 : Petition filed under Article 227 of the Constitution of India, against the order dated 22.10.2010 made in I.A.No.1047 of 2007 in O.S.No.1039 of 2007 on the file of the Principal District Munsif Court, Trichy.

Prayer in CRP.398/2012 : Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 06.08.2010 made in O.S.No.2313 of 2004 on the file of the Principal District Munsif Court, Trichy.

CRP.132/2011 :-

For Petitioners : Mr.B.Vijay Karthikeyan
Senior Standing Counsel for Customs and Central Excise
For Respondent : Mr.K.S.Sankar Murali

CRP.398/2012 :-

For Petitioners : Mr.B.Vijay Karthikeyan
Senior Standing Counsel for Customs and Central Excise
For R1 to R3 : Mr.K.S.Sankar Murali (No Appearance)
For R4 & R5 : Mr.J.Gunaseelan Muthiah

COMMON ORDER

CRP.132/2011 has been filed against the order dated 22.10.2010 made in I.A.No.1047 of 2007 in O.S.No.1039 of 2007 on the file of the Principal District Munsif Court, Trichy.

CRP.398/2012 has been filed against the judgment and decree dated 06.08.2010 made in O.S.No.2313 of 2004 on the file of the Principal District Munsif Court, Trichy.

2.As pleadings and submissions are common, both the revisions are taken up together and disposed of by this common order.

3.The facts of the case in CRP.132/11 are that O.S.No.1039 of 2007 has been filed for declaration that the plaintiff/respondent in CRP.132/11 is exempted from the purview of the payment of service tax and consequential permanent injunction restraining the defendants from demainding service tax from the plaintiff through the impugned notice dated 27.03.2007. Pending the above suit, the revision petitioners/defendants filed I.A.No.1047/2007 to take the issue whether the Court below is having jurisdiction, as a preliminary issue and decide the same at the first instance. The Court below dismissed the said I.A holding that the issue of jurisdiction can be decided only after hearing both sides, against which, CRP.132/11 is filed.

4.The facts of the case in CRP.398/12 are that O.S.No.2313/2004 has been filed by the respondents 1 to 3 in CRP.398/12/plaintiffs for a declaration that the proceedings of the 2nd petitioner in CRP.398/12/2nd defendant C.No.IV/16/85/03/STAX dated 20.02.2004 is ultra vires, void *ab initio,* without jurisdiction, arbitrary null and void and for consequential permanent injunction restraining the defendants their men, servants and agents from resorting to any coercive steps for recovery of the alleged service tax due by giving effect to the said impugned order of the 2nd defendant in any manner. In the said suit, the defendants called absent and they were set exparte and exparte decree was passed on 06.08.2010, against which, the defendants have filed CRP.398/12.

5.The main contention raised by the learned Senior Standing counsel for the petitioners is that the suits are not maintainable as the Civil Court has no jurisdiction to entertain the service tax matter. In support of the said contention, he relied on a judgment of the Hon'ble Supreme Court in *Hindustan Laminators Pvt. Ltd., vs. Union of India in F.M.A.T. 2322 of 2003 decided on 09.09.2003*. He also relied on paragraphs 2 and 3 of the proceedings in C.No.V/ST/15/23/2007-CEx Adj, Order No.04/2007(ST), dated 28.08.2007 of the Joint Commissioner of Central Excise, Trichy, to state that there is an appeal remedy to the plaintiffs. Therefore, he prayed for allowing the revision petitions.

6.Heard both sides and perused the records.

7.Paragraphs 2 and 3 of the proceedings in C.No.V/ST/15/23/2007-CEx Adj, Order No.04/2007(ST), dated 28.08.2007 of the Joint Commissioner of Central Excise, Trichy are reproduced hereunder:-

''2.Any person deeming himself aggrieved by this order may appeal against the same to the Commissioner of Customs & Central Excise (Appeals), Office of the Commissioner of Customs & Central Excise No.1, Williams Road, Cantonment, Tiruchirappalli 620 001.

3.The appeal shall be filed within 3 months from the date on which this order is communicated to the person to whom it is addressed, shall be in the prescribed form ST4 and shall be verified in the prescribed manner.''

8.From the above, it is seen that as against the order passed by the Joint Commissioner of Customs & Central Excise, there is an appeal remedy to the the Commissioner of Customs & Central Excise

(Appeals). Further, in the judgment of the Hon'ble Supreme Court in **Hindustan Laminators Pvt. Ltd., vs. Union of India in F.M.A.T. 2322 of 2003 decided on 09.09.2003**, the Apex Court has specifically held that the statutory provisions of the Central Excise Act deal with the questions of revenue and, as such, detailed provisions have been created for appeal and then the remedy can be pursued up to High Court and also Supreme Court in order to shorten the period of litigation for a quick decision. Thus, the dilatory and time consuming proceeding of a suit before a Civil Court has been impliedly barred.

9.From the above judgment of the Apex Court, it is seen that the Civil Court has got no jurisdiction to entertain the suit relating to service tax matter and therefore, the Court below ought to have allowed I.A.No.1047/2007 filed to decide the issue of jurisdiction and should not have entertained O.S.No.2313/2004 and passed exparte decree dated 06.08.2010.

10.Accordingly, the order dated 22.10.2010 made in I.A.No.1047 of 2007 in O.S.No.1039 of 2007 and the exparte judgment and decree dated 06.08.2010 made in O.S.No.2313 of 2004, are set aside and both the Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar( )

To

The_Principal District Munsif,
Trichy.

+2ccs to Mr. B. Vijaykarthikeyan, Advocate in SR 56983
+1cc to Mr. K.S.Sankarmurali, Advocate SR 57659
+1cc to Special Government Pleader in SR 57778 & 57779

RR/02.05.2019/4P/6C

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