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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 17265/2006**

S.P.L.INDUSTRIES LTD. ..... Petitioner

Through: Mr P.S. Bindra, Advocate.

versus

UOI & ANR. ..... Respondents

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
% **13.05.2019**

CM No. 22628/2019 (early hearing)

1. For the reasons stated in the application is allowed and the writ petition is taken up for hearing.

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2. This writ petition challenges constitutional vires of Sections 3 and 4 of the Taxation Laws (Amendment Act), 2005, thereby amending Section 80HHC (3)(i) of the Income Tax Act, 1961 with retrospective effect from 01.04.1992.

3. The Petitioner is entitled to partly succeed in view of and in terms of the judgment of the Supreme Court in ***Commissioner of Income Tax-5 and Anr. vs. Avani Exports and Anr., (2016) 16 SCC 741***, substantially affirming the decision of Gujarat High Court in ***Avani Exports v. CIT (2012) 348 ITR 391***. The amendment imposed conditions and had limited and restricted benefit to exporters having a turnover of more than Rs.10

crores per annum and the same has been quashed and declared ultra vires. Further, retrospective amendment would not be detrimental to the Assessee.

4.The Supreme Court decision also refers to the statement made on behalf of the Union of India by the Attorney General of India. It had substituted the direction given by the Gujarat High Court with the following direction:

> "Having seen the twin conditions and since Section 80- HHC benefit is not available after 1-4-2005, we are satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the judgment in appeal."

5. The ratio and directions given by the Supreme Court in ***Avani Exports*** (*supra*) will equally apply to the present writ petition, which is accordingly allowed in terms of the said decision. There would be no order as to costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 13, 2019
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