IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2020

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Writ Petition Nos.29868 & 29869 of 2006
& M.P.Nos.1 and 1 of 2006

M/s. Mahindra Holidays and Resorts India Ltd.,
Rep. By its Managing Director R.Ramesh
"Mahindra Towers" 2nd Floor
17/18, Pattulos Road, Chennai 600 002
... Petitioner in both W.Ps.

Vs.

1. The Commissioner of Service Tax,
   6th Floor, MHU Complex, 692 Anna Salai,
   Nandanam, Chennai 600 035

2. The Joint Commissioner of Service Tax,
   6th Floor, MHU Complex, 692 Anna Salai,
   Nandanam, Chennai 600 035

3. The Superintendent of Service Tax,
   SIV Cell, 6th Floor, MHU Complex, 692 Anna Salai,
   Nandanam, Chennai 600 035 ... Respondents in both W.Ps.

Prayer in W.P.No.29868 of 2006: Writ Petition is filed under article 226 of the Constitution of India, praying to issue a writ of prohibition prohibiting the respondents and their men, officers from levying, demanding or collecting service tax on the contracts entered by the petitioner prior to 16.06.2005.

Prayer in W.P.No.29869 of 2006: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of prohibition prohibiting the respondents and their men, officers from levying, demanding or collecting service tax from the petitioner on entrance fee in excess of 10.2% at 12.24% for contracts entered between 16.06.2005 and 18.04.2006.

For Petitioner (in both W.Ps.): Mr. Anish
For Respondents (in both W.Ps.) : Mrs.Hema Muralikrishnan Sr. Standing Counsel.

C O M M O N   O R D E R

According to the petitioner, they incorporated in the year 1996, to carry on the business of time share. They are liable to pay service tax at 10.2% inclusive of education cess, for the services/contracts rendered by it, with effect from 16.06.2005, under the definition of taxable service of "club or association", as provided in the Finance Act, 2005. While so, the third respondent sent a communication dated 23.03.2006, calling upon the petitioner to furnish details with respect to the amounts received by way of Installments/EMIs on or after 16.06.2005 from the members, who have enrolled prior to 16.06.2005, for the purpose of levy of service tax. Following the same, they issued summons to the petitioner on 30.03.2006, to which, the petitioner submitted its replies dated 10.04.2006 and 20.04.2006 to the first respondent. However, the first respondent vide communication dated 23.05.2006, clarified that by its very nature, club or association service/membership service of clubs, is a continuous service till the end of the membership /contracted period; since the levy was introduced with effect from 16.06.2005, all the services rendered to members after 16.06.2005 become taxable service; and hence, the petitioner, in respect of club services i.e., time share service and facilities, provided to its members (existing or new) from 16.06.2005, are liable to pay service tax. It is now, the grievance of the petitioner that they are liable to pay service tax on entrance fees for the contracts entered prior to 16.06.2005 on the installments/EMIs collected after 16.06.2005 from its members, who have enrolled prior to 16.06.2005; and that, the rate of service tax was increased from 10.2% to 12.24% against the portion of entrance fees collected in installments, merely because installments fall due after 18.04.2006. Hence, they have filed the present two writ petitions, seeking prohibition prohibiting the respondents from levying, demanding or collecting service tax on the contracts entered by it prior to 16.06.2005 and on entrance fees in excess of 10.2% at 12.24% for the contracts entered between 16.06.2005 and 18.04.2006.

2. Today, when these writ matters are taken up by this Court through Video Conferencing, CISCO Webex Meeting, on account of COVID-19, the learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents jointly submitted that the issue involved herein is covered by the decision of the Supreme Court in State of West Bengal and others v. Calcutta Club Limited and others, [MANU/SC/1367/2019], wherein it is held as follows:

"83. The expression "unincorporated associations" would include persons who join together in some common purpose or common action – see ICT, Bombay North, Kutch and Saurashtra, Ahmedabad v. Indira Balkrishna (1960) 3 SCR 513 at page 519-520. The expression "as the case may be" would refer to different groups of individuals either bunched together in the form of an association also, or otherwise as a group of persons who come together with some common object in mind. Whichever way it is looked at, what is important is that the expression "body of persons" cannot possibly include within it bodies corporate.

84. We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following Young Men's Indian Association (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form.

85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No.321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show-cause notices, demand notices and other action taken to levy and collect service tax from incorporated members' clubs are declared to be void and of no effect in law."

3. Following the aforesaid decision, this Court is of the view that there is no requirement for the respondents to levy service tax on the petitioner, with respect to the services provided to its members. Accordingly, the present two writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

srk

To

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aa04/08/2020