IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.11811 OF 2010
AND
M.P.NO.1 OF 2010

M/s.Vijayaraja & Co.,
120, Senguptha Street,
Ramnagar, Coimbatore - 641009. … Petitioner

Vs.

1. The Commissioner of Central Excise,
Coimbatore Commissionerate,
6/7, ATD Street,
Race Course Road,
Coimbatore - 641018.

2. The Additional Director General,
Directorate General of Central
Excise Intelligence,
Rajaji Bhavan,
Besant Nagar, Chennai - 600090.

3. Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110001. …Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare Explanation in Sl.No.7 of Notification No.1/2006-ST dated 01.03.2006 as ultra vires, contradictory and without any source of power to the enabling provision namely Section 65(105)(zzq), 65(105)(zzzh), 66 and 67 of the Finance Act, 1994 as amended and also ultra vires Article 14 and 265 of the Constitution of India insofar as the petitioner is concerned.

For Petitioner : Mr.J.Shankar Raman
for Mr.S.Senthil Nathan

For Respondents: Mr.P.Rajkumar Jhabakh
for R1 & R2

ORDER

Today, the matter is listed through Video Conferencing. By consent of both the parties, the Writ Petition is taken up for final disposal.

2. As against the show cause notice dated 02.03.2009, proposing to levy service tax together with interest, the petitioner had challenged the explanation in Notification No.1/2006-ST dated 01.03.2006, stating that the explanation is ultra vires to the provisions of the Finance Act, 1994.

3. It is stated by the learned counsel for the petitioner that the issue involved in the present writ petition has been decided in favour of the assessee by the Hon'ble Supreme Court in the case of Commissioner of Service Tax & Ors. Vs Bhayana Builders Private Limited & Ors. reported in (2018) 3 SCC 782. Apart from the decision of the Hon'ble Supreme Court, the learned counsel has also raised grounds touching upon the factual aspects and merits of the case.

4. Since the writ petition itself emanates from a show cause notice and also since the petitioner has touched upon certain factual aspects of the case, it would be appropriate to grant liberty to the petitioner to raise all his objections, including placing reliance on the decision of the Hon'ble Supreme Court in Bhayana Builders case (supra).

5. In the light of the above observations, the matter is remanded back to the appropriate adjudicating authority. The petitioner is granted liberty to raise his obections by way of a reply to the show cause notice dated 02.03.2009, atleast within a period of 15 days from the date of receipt of a copy of this order. On such objections being raised, the concerned adjudicating authority shall take further course of action on its own merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner, if necessary through video conferencing, as expeditiously as possible.

6. The Writ Petition stands disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Commissioner of Central Excise,
   Coimbatore Commissionerate,
   6/7, ATD Street,
   Race Course Road,
   Coimbatore - 641018.

2. The Additional Director General,
   Directorate General of Central
   Excise Intelligence,
   Rajaji Bhavan,
   Besant Nagar, Chennai - 600090.

3. The Secretary,
   Union of India,
   Ministry of Finance,
   Department of Revenue,
   Government of India,
   North Block, New Delhi - 110001.

W.P.No.11811 of 2010
and
M.P.No.1 of 2010

LN(CO)
CS/29/10/2020