IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.A.Nos.990 and 991 of 2020 and
C.M.P.Nos.12114 & 12123 of 2020

BGR Energy Systems Limited,
rep. by its Assistant Vice President-Accounts,
No.443, Anna Salai, Teynampet,
Chennai 600 018. ..Appellant in both Appeals/Petitioner

Versus

The Additional Commissioner of GST & Central Excise,
Office of the Principal Commissioner of CGST & Central Excise,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
..Respondent in WA 990 of 2020/Respondent

Commissioner of GST & Central Excise (Appeals-I),
Office of the Commissioner of GST & Central Excise (Appeals-I)
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
..Respondent in WA 991 of 2020/Respondent

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 22.11.2019 in W.P.No.32675 of 2018 and 199 of 2019 passed by this court.

W.P.No.32675 of 2018:
The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ or order or direction calling for the records on the file of the Respondent in proceedings Order in Original No.147/2018-CH.N (ADC) dated 31.08.2018.

W.P.No.199/2019 for W.A. 990 & 991/2020: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ or order or direction calling for the records on the file of the Respondent in proceedings order in Appeal No. 489-492/2018(CTA-I) dated 17.09.2018.

For Appellant : Mr.Joseph Prabakar
For Respondents : Mr.T.Pramodkumar Chopda, Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

These intra-Court appeals are filed aggrieved by the order passed by the learned Single Judge dated 22.11.2019 whereby the Writ Petitions of the Petitioner BGR Energy Systems Limited were dismissed on merits and the learned Single Judge was pleased to hold that the Assessee was liable to pay Service Tax on the Services availed by the Bank viz., Indian Bank, Adyar, Chennai from the foreign parties for providing Performance Bank Guarantee in Iraq to the customer of the present Petitioner.

2. The Assessee cited certain Trade Notices and the order passed by the Commissioner of Service Tax, Bombay in some other cases of similar nature and submitted that such Trade Notices are binding on the other Commissionerates regarding the taxability of the Services in the hands of the Assessee, but, the learned Single Judge has decided the merits against the Assessee on his own. He submitted that the question raised was only with regard to judicial discipline in the matter of Trade Notices to be followed by the other Revenue Authorities.

3. Mr.T.Pramodkumar Chopda learned Senior Standing Counsel appearing for the Respondent/Revenue supported the order of the learned Single Judge.

4. Having heard the learned counsel for the parties, we are satisfied that the Assessee ought not have invoked the Writ Jurisdiction straightway against the Assessment Order adjudicating the issue, which involves mixed questions of facts and law viz., whether further Service Tax was to be levied upon the Assessee Company, even if the Indian Banker of the Assessee had already paid Service Tax on the Services availed by it from the foreign Banks for providing such Performance Bank Guarantee to the Customers of present Asessee in Iraq is said to have even realised that Service Tax from the Assessee. The said question and applicability of Trade Notices and the order passed by the Commissioner of Service Tax in some other cases, are all mixed questions of facts and law and the Assessee ought to have filed regular Appeal under the Act before the first Appellate

Authority and thereafter before the learned Tribunal in Second Appeal. Only on the substantial question of law arising in the order of the learned Tribunal, a regular Appeal could have been filed before the High Court.

5. The learned counsel for the Appellant Mr.J.Prabhakar submitted that he may be permitted to withdraw the Writ Petition itself and move the Appellate Authority and the Appellate Authorities may be directed to decide the Appeal on merits in accordance with law without influenced by the observations of the learned Single Judge in the order impugned before us.

6. Mr.T.Pramodkumar Chopda learned Senior Standing Counsel appearing for the Respondent/Revenue does not have any serious objection to this.

7. Accordingly, we dispose of the Appeals with a liberty to the Appellant to withdraw the Writ Petition itself and move the concerned Appellate Authority insofar as W.A.No.990 of 2020 and W.A.No.991 of 2020 are concerned.

8. If a regular Appeal is filed before concerned Appellate Forum within six weeks from today, subject to compliance of the usual conditions for entertaining such Appeal, without raising any objection for the delay in filing the Appeal, it shall be entertained and decided on merits in accordance with law and thereafter, if the Appellant is aggrieved against the order passed by the learned first Appellate Authority, the Assessee may file the second Appeal before the learned Tribunal provided under the Act. Such Appellate Authorities will decide the Appeals in accordance with law, uninfluenced by any observations made in the order of the learned Single Judge impugned before us.

9. With this observations, the Writ Appeals are disposed of. No order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssk.

To:

1. The Additional Commissioner of GST & Central Excise,
Office of the Principal Commissioner of CGST & Central Excise,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2. Commissioner of GST & Central Excise (Appeals-I),
Office of the Commissioner of GST & Central Excise (Appeals-I)
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

+1 CC to Mr.T.Pramodkumar Chopda, Advocate sr 39090.

W.A.Nos.990 and 991 of 2020

PVS(CO)
SP(15/12/2020)