IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.14551 to 14556 of 2018

and W.M.P.Nos.17187 and 17188 of 2018

M/s..Hotel Baskar
Rep. by its Proprietor, Mr.S.Baskar .. Petitioner in WPs.14551, 14552 & 14556 of 2018

P.Murugesan,
Proprietor of M/s.Hotel Nellai Restaurant and Bar. .. Petitioner in WPs. 14553 to 14555 of 2018

-vs-

1.Union of India,
rep. by its Secretary, Ministry of Finance,
Dept. of Revenue, New Delhi.

2.The Govt. of Tamil Nadu,
rep. by its Secretary to Govt.,
Revenue Dept., Fort St. George,
Chennai-09.

3.The Principal Commissioner of
Central Excise & Service Tax,
No.26/1, Mahathma Gandhi Road,
Chennai-34. .. Respondents 1 to 3 in all WPs.

4.The Joint Commissioner of Central
Excise & Service Tax, Office of the
Comr. Of Central Excise & Service Tax,
Central Revenue Building Tractor Rd.,
NGO 'A' Colony, Tirunelveli 627 007. .. Respondent no.4 WPs.14551, 14552 & 14556/18

5.The Assistant Commissioner of
CGST & Central Excise,
Tirunelveli Division, No.2/1,
Nehru Nagar, STC College Road,
NGO 'A' Colony, Perumalpuram,
Tirunelveli - 627 007.

.. Respondent No.5 in Wps.14551 & 14552/18 and Respondent no. 4 in Wps.14556 to 14555/18

Petitions filed under Article 226 of the Constitution of India, praying for issue of

(i) WPs.14551 & 14553/2018 - Writ of Declaration to declare that Section 66E(1) read with Section 65B(22) and Section 65B (44) as inserted by the Finance Act 2012 by the amendment made to the Chapter V of the Finance Act 1994 to the extent the said provisions declares the service provided by the restaurant eating joints or mess in relation to serving of food and beverages (whether or not intoxicating) having Air Conditioning or Central Air heating in any part of the establishment at any time during the financial year as Declared Service under Section 66E read with Section 65B(22) and accordingly bringing under the definition of Service under Section 65B(44) for the purpose of charging to Service Tax under Section 66B of the Act is illegal, ultra vires, beyond the legislative competence of the Parliament and unenforceable and liable to be struck down as unconstitutional, null and void and of no effect;

(ii) WP.14552/2018 - Writ of Certiorarified Mandamus to call for the records in regard to Order-in-Original No.90 and 91/AC/ST/2017 (C. No.V/ ST/ 15/ 19/ 2016-Adjn) dt 29.8.2017 passed by the 5th respondent and quash the same and restrain the respondents from demanding the service tax from the petitioner;

(iii) WP.No.14554/2018 - Writ of Certiorarified Mandamus to call for the records in regard to Order-in-Original No. 94/AC/St/2017 (C.No. V/ ST/ 15/ 32/ 2-17-Adjn) dated 20.09.2017 passed by the 4th respondent and quash the same the restrain the respondents from demanding the Service Tax from the petitioner; and

(iv)WP.14555 & 14556/2018 - Writ of Declaration to declare that Notification No. 3 of 2013 dated 01.03.2013 and Notification No. 25 of 2012 dated 20.06.2012 (Sl.No. 19) issued from the office of Ministry of Finance (Department of Revenue) Government of India read along with Section 66E(i) 65B(22) and 65B(44) of the Finance Act 1994 by the amended by the Finance Act. 2012 to the extend it seeks to levy Service Tax on the service provided by Restaurant eating joints or mess in relation to serving of food and Beverages (whether or not intoxicating) having Air Conditioning or Central Air hearing in any part of the establishment at any time during the financial year is illegal ultra vires beyond the legislative competence of parliament and unenforceable and liable to be struck down as unconstitutional, null and void and of no effect.

For Petitioners in all WPs.	: Mr.Abdul Nazeer
For Respondent Nos. 3 to 5 in WPs.14551, 14552 & 14556 of 2018 and for RR 3 and 4 in WPs. 14553 to 14556 of 2018	: Mr.T.Promodkumar Chopda Sr. Stdg. Counsel for CBEC

ORDER

(Order of the Court was passed by The Hon'ble Chief Justice)

Heard Mr.M.Abdul Nazeer, learned counsel for the petitioners and Mr.T.Promodkumar Chopda, learned Senior Standing Counsel for the respondents Department.

2.An endorsement has been made by way of a letter dated 06.08.2020 by the learned counsel stating that since the writ petitioners have settled the issues, they do not want to press the writ petitions and they may be permitted to withdraw the writ petitions.

The Writ Petitions, are, accordingly, dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Govt. of India,
Ministry of Finance, Dept. of Revenue,
New Delhi.

2.The Secretary to Govt. of Tamil Nadu,
Revenue Dept., Fort St. George,
Chennai-09.

3.The Principal Commissioner of
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NGO 'A' Colony, Perumalpuram,
Tirunelveli - 627 007.

+1 cc to Mr.T.Pramod Kumar chopda,advocate,sr.26775.

Ad(co0
krd 28/8

W.P.Nos.14551 to 14555 of 2018