IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2944 2018
and
W.M.P. No. 3610 of 2018

M/s. Sree Gokulam Chit and Finance Company (P) Ltd.,
Represented by its Director,
Mr. V.C. Praveen,
Shree Gokulam Towers,
No. 66, Old No. 356, Arcot Road,
Kodambakkam,
Chennai - 600 024. ...Petitioner

-vs-

The Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South
No. 962, MHU Complex, 5th Floor, Annal Salai,
Nandanam, Chennai - 600 035. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in file bearing File No. C. No. IV/09/107/2016-ST Adj comprising of Order-in-Original No. 1/2018 dated 24.01.2018 on the file of the Respondent and quash the same.

For Petitioner : Mrs. Jayalakshmi
for Mr. S. Muthu Venkataraman

For Respondent : A.P. Srinivas
Senior Standing Counsel

O R D E R
(through video conference)

Heard Mrs. Jayalakshmi, Learned Counsel appearing for the Petitioner and Mr. A.P. Srinivas, Learned Senior Standing Counsel for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order-in-Original No. 1 of 2018 dated 24.01.2018 passed by the Respondent levying service

tax on the Petitioner as foreman of chit fund business for the period from October 2014 to May 2015.

2. It is brought to notice of this Court by the Learned Counsel for the Petitioner that the Hon'ble Supreme Court of India in Union of India -vs- Margadarshi Chit Funds (P) Ltd., [(2017) 13 SCC 806] has held that service tax cannot be levied on the foreman of chit fund business for the period from 15.06.2007 to 14.06.2015 and relevant passages from that decision are extracted below:-

> "23. ....By the aforesaid amendment, activity carried out by foreman of a chit fund for conducting or organising a chit in any manner is to be covered by the expression "transaction in money or actionable claim". Thus, it has been brought specifically within the definition of "service" by the aforesaid amendment which takes effect from 15-6-2015. Therefore, there is no dispute that w.e.f. 15-6-2015, service tax is payable on chit fund.
>
> 24. The aforesaid historical background would demonstrate that admittedly up to 14-6-2007, chit fund business was not exigible to service tax. Likewise, from 1-7-2012 to 14-6-2015, no service tax was payable. Present dispute concerns the intervening period from 15-6-2007 to 30-6-2012, the outcome whereof depends upon the definition of "banking and financial service" contained in clause (12) of Section 65 of the Act and particularly sub-clause (v) thereof as amended in 2007."

It is submitted that inasmuch as service tax has been levied on the Petitioner from October 2014 to May 2015, which falls during the said period, the impugned order cannot be sustained.

3. Having regard to the said authoritative pronouncement of the Hon'ble Supreme Court of India, which holds the field, it is not possible to sustain the impugned order, which shall stand set aside. The Respondent shall not be entitled to recover the service tax demanded from the Petitioner in the impugned order.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of GST and Central Excise,
Office of the Commissioner of GST and Central Excise,
Chennai South
No. 962, MHU Complex, 5th Floor, Annal Salai,
Nandanam, Chennai - 600 035.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.38511

W.P. No. 2944 2018

SSI(CO)
CS(29/12/2020)