IN THE HIGH COURT OF JUDICATURE OF MADRAS

Dated :18.09.2020
CORAM:
THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.23584 of 2017
and WMP.No.24725 of 2017

M/s.Sree Gokulam Chits and Finance Company (P) Ltd.,
Shree Gokulam Towers,
No.66 Old No.356, Arcot Road,
Kodambakkam,
Chennai-600 024. ... Petitioner

Vs.

The Commissioner of Service Tax-II,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar,
Chennai-600 040. ...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/09/82/2015-ST.II Adjn comprising of Order-in-Original No.CHN-SVTAX-002-COM-1-2017-2018 dated 21.04.2017 on the file of the respondent and to quash the same.

For Petitioner:Ms.Jayalakshmi
for Mr.S.Muthuvenkataraman
For Respondent:Mr.A.P.Srinivas, Sr. S.C

O R D E R

With the consent of both the parties, the present Writ Petition is heard today through Video Conferencing.

2. The respondent had issued a show cause notice to the petitioner's firm, demanding service tax on the Foreman Commission, to which the petitioner's had raised their objections by way of a reply. According to the petitioner, the Chit Fund Companies are outside the scope of service tax. However, disregarding their objections, the impugned order has been passed by the respondent bringing the Chit Fund Firm within the scope of service tax.

3. In support of her contentions, the learned counsel cited the decision of the Hon'ble Supreme Court in the case of Union of India & others V. M/s.Margadarshi Chit Funds (P) Ltd., etc. reported in 2017 (3) GSTL 3, in which it had held that from 01.07.2012 to 14.06.2015, no service tax is payable. The

relevant portion of the order reads as follows:

> 20) 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 June 15, 2015. Therefore, there is no dispute that w.e.f. June 15, 2015, service tax is payable on chit fund.
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> 21) The aforesaid historical background would demonstrate that admittedly upto June 14, 2007, chit fund business was not exigible to service tax. Likewise, from July 01, 2012 to June 14, 2015, no service tax was payable. Present dispute concerns the intervening period from June 15, 2007 to June 30, 2012, the outcome whereof depends upon the definition of banking and financial service contained in sub-section (12) of Section 65 of the Act and particularly sub-clause (v) thereof as amended in 2007."

The aforesaid abstract is self explanatory.

4. Mr.A.P.Srinivas, learned Senior Standing counsel for the respondent submitted that the Writ Petition does not require consideration since the petitioner has not availed the alternate remedy. I am not in agreement with such a submission. When it is apparently seen that the order itself is not in conformity with the ratio laid down by the Hon'ble Supreme Court in Margadarshi's case (supra), no useful purpose will be served by directing the petitioner to avail the alternate remedy.

5. In view of the aforesaid decision of the Hon'ble Apex Court, the present impugned order dated 21.04.2017, cannot be sustained. Accordingly, the impugned order dated 21.04.2017 passed by the respondent herein is quashed and consequently, the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commissioner of Service Tax-II,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar,
Chennai-600 040.

+1 CC to Mr.S.Muthuvenkataraman, Advocate sr 30570.
+1 CC to Mr.A.P.Srinivas, Advocate sr 30528.

W.P.No.23584 of 2017
and
WMP.No.24725 of 2017

SAI(CO)
SP(12/10/2020)