IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

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

W.P. No. 26189 of 2018
and
W.M.P. No. 30410 of 2018

M/s. Trinity's Clearing and Shipping Agencies
Rep. by its Partner: S.Alenxander
No.30, Thambu Chetty Street
Parry's, Chennai – 600 001. ...Petitioner

-vs-

1. Union of India
Rep. by its Secretary to Govt.
Dept. of Revenue
Ministry of Finance
North Block, New Delhi.

2. The Assistant Commissioner of GST
and Central Excise
Egmore Division
Chennai North Commissionerate
Newry Towers, I Floor
Plot No. 2054, I Block, II Avenue
12^{th} Main Road, Anna Nagar
Chennai – 600 040. ...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned show cause notice dated 42/2018 dated 19.04.2018 issued by the Second Respondent and quash the same as without authority of law, arbitrary and invoking a provision which had been held ultra vires and unsustainable in law.

For Petitioner : Mr. M.A.Mudimannan

For Respondents : Mr. A.P.Srinivas,
Senior Standing Counsel

O R D E R
(through video conference)

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

2. The Writ Petition challenges the show cause notice in C. No. IV/16/238/ 2018-Adj dated 19.04.2018 issued by the Second Respondent to the Petitioner for contravention of the provisions of;

(i) Rule 5 of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the Rules) read with Section 67 of the Finance Act, 1994, inasmuch as the Assessee has failed to include the costs incurred for provision of service in the taxable value;

(ii) Rule 6(1) of the Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994, inasmuch as the Assessee has failed to pay appropriate Service Tax; and

(iii) Rule 7 of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994, inasmuch as the Assessee has failed to declare the actual taxable value in their ST-3 return.

3. It is brought to notice that the Petitioner had earlier challenged the validity of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as 'the Rules' for short) before this Court in W.P. No. 14747 of 2016 and also similar show cause notices dated 21.01.2016 and 04.06.2015 in respect of the transactions relating to the year 2015-2016 invoking the said rule in the Writ Petitions in W.P. Nos. 14748 and 14749 of 2016 before this Court. When the matter came up for admission on 24.06.2016, this Court had passed the following self-explanatory order:-

> “2. On writ petitions challenging the Constitutional validity of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 and a consequential show cause notices issued against some other company, a Division Bench of this Court, to which one of us (VRSJ) was a party, passed the following order on 4.4.2016 in W.P.Nos.10765 and 10766 of 2016:
>
> > " Heard Mr.Krishna Srinivas, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the Department.
> >
> > 2. The show cause notices, impugned in these writ petitions, have been issued under Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. But, a Bench of the Delhi High Court has declared the said Rule, by its decision in Intercontinental Consultants and Technorats Pvt. Ltd. Vs. Union of India [2012 SCC Online Del. 5958], to be ultra vires and unconstitutional.
> >
> > 3. Though the Supreme Court has ordered notice in the special leave petition in S.L.P.(Civil)

No.10918 of 2013, no stay appears to have been granted. In view of the observations made by the Supreme Court in paragraph 22 of its decision in Kusum Ingots & Alloys Ltd. Vs. Union of India [2004 (6) SCC 254], the declaration of a provision of law by any High Court, which has jurisdiction, to be unconstitutional, would have effect through out the territory of India. Therefore, it is upto the Union of India to move their applications for stay before the Supreme Court in the pending special leave petition, as otherwise all such notices issued through out India are liable to be stayed.

4. Therefore, there will be an interim stay. Post after two weeks for counter."

3. Following the same, there will be an interim stay of the adjudication orders. Post after four weeks for counter."

Subsequently, the Respondents had filed Transfer Petitions in Transfer Petition (Civil) Nos. 501 to 506 of 2017 before the Hon'ble Supreme Court of India. The aforesaid Transfer Petitions had been allowed and the Writ Petitions was transferred to the Hon'ble Supreme Court of India and disposed in terms of the order passed in Union of India -vs- Intercontinental Consultants and Technocrats Private Limited [(2018) 4 SCC 669]. In the said decision, the Hon'ble Supreme Court of India has held that Rule 5(1) of the Rules as ultravires the Act and unenforceable in law.

4. In view of the aforesaid decision of the Hon'ble Supreme Court of India, the impugned show cause notice in the present case invoking Rule 5(1) of the Rules cannot be sustained. The show cause notice in respect of other provisions, viz., Rule 6 (1) of the Service Tax Rules, 1994 read with Section 68 of the Finance Act, 1994, and Rule 7 of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994, are merely procedural in nature and consequential to Rule 5(1) of the Rules and as such, they cannot independently exist. Accordingly, the impugned show cause notice in entirety is quashed. However, this shall not be construed as precluding the Petitioner from carrying out its obligations under other statutory provisions as required by law.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Union of India,
representation by its Secretary to Government,
Department of Revenue,
Ministry of Finance, North Block
New Delhi.

2. The Assistant Commissioner of GST and
Central Excise, Egmore Division
Chennai North Commissionerate
Newry Towers, Ist floor, Plot No.2054, I Block,
II Avenue, Ch-040.

+1cc to Mr.A.P.Srinivas, Standing Counsel for Central Excise,
Advocate, S.R.No.35915

W.P. No. 26189 of 2018

SRA(CO)
RV(02/12/2020)