IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No. 88 of 2012
and
M.P.No.1 of 2012

1. Union of India
Rep. by the Secretary
Department of Revenue
Ministry of Finance
New Delhi - 110 001.

2. The Chairman
Central Board of Excise & Customs
North Block
New Delhi - 110 001.

3. The Chief Commissioner of Central Excise
Nungambakkam High Road
Nungambakkam
Chennai - 600 034. .. Appellants/Petitioners

v.

M/s. Orchid Chemicals & Pharmaceutials Ltd.
313, Valluvar Kottam High Road
Nungambakkam
Chennai - 600 034. .. Respondent/Respondent

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 16.08.2010 passed in W.P.No. 6460 of 2006.

Prayer in WP.No.6460/2006: Petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration declraing the provisions of explanation under section 65(105) of the Finance Act, 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 as introduced by Finance Act, 2005 and Notification No.23/2005 ST.dated 07/06/2005 respectively, as ultra vires of Articles 19(1)(g) 245 and 265 of the Constitution of India in so far as the petitioners are concerned.

For Appellants : Mr. A.P.Srinivas

For Respondent : Mr. R.Raghavan

J U D G M E N T

(Judgment of the court was made by R.Mahadevan, J.)

This appeal arises from the order of this court dated 16.08.2010 passed in W.P. No. 6460 of 2006.

2.The relief sought in the above referred writ petition filed by the respondent herein is to issue a writ of declaration declaring the Explanation to section 65(105) of the Finance Act, 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 as introduced by the Finance Act, 2005 and Notification No.23/2005 ST, dated 07.06.2005 respectively, as ultra vires Articles 19(1)(g), 245 and 265 of the Constitution of India.

3.The learned single judge, after following the decision of a Division Bench of Bombay High Court in Indian National Shipowners Association v. Union of India [2009 (13) STR 235 (Bom.), which was confirmed by the Supreme Court in SLP Civil No.18932 of 2009 on 14.12.2009, has disposed of the writ petition, holding that the appellants cannot levy service tax on the respondent company for the period from 01.03.2002 till 17.04.2006 in relation to the services received.

4.Challenging the aforesaid order, the appellants have preferred this writ appeal, by relying on a judgment of the Rajasthan High Court in Union of India v. Aditya Cement [2008 (10) STR 228 (Raj)].

5.When the matter was taken up for consideration, the learned counsel for the appellants and the learned counsel for the respondent submitted that the issue involved herein is covered by the judgment of this Court in W.A.No.1386 of 2011 dated 17.01.2018 in the case of UOI, Rep. by the Secretary, Department of Revenue, Ministry of Finance, New Delhi v. Wheels India Limited, in which, the Division Bench of this court, after following the supreme court decision in SLP Civil No.18932 of 2009, dismissed the writ appeal. The observations made in the said judgment are profitably extracted below:

"4.The learned single Judge by placing reliance on the law laid down by the Division Bench of the Bombay High Court, which was confirmed by the Hon'ble Supreme Court in S.L.P.Civil No.18932 of 2009 allowed the writ petition filed by the respondent. There is no question of setting aside the order passed by the learned single Judge on the basis of a decision rendered by a learned single Judge of the Rajasthan High Court. The appellants have filed this appeal without any legal basis. When there is a judgment rendered by the Hon'ble Supreme Court interpreting the provisions of Service Tax, it is not open to the appellants to file an appeal by placing reliance on the decision of the High Court of Rajasthan. In fact, the decision rendered by the High Court of Rajasthan was much prior to the judgment rendered by the Hon'ble Supreme Court.

5.The High Court is flooded with litigations at the instance of the Government and the present case is a classic example as to how appeals are filed in a routine manner by placing reliance on the judgment of the High Court in a matter wherein, the issue is covered by the judgment of the Hon'ble Supreme Court. We hope and trust that the Union of India would not file such frivolous appeals henceforth.

6.The writ appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed."

6.Following the above referred judgment, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

Maya

To

1. The Secretary
Department of Revenue
Ministry of Finance
New Delhi - 110 001.

2. The Chairman
Central Board of Excise & Customs
North Blockm
New Delhi - 110 001.

3. The Chief Commissioner of Central
Excise, Nungambakkam High Road
Nungambakkam
Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.60877
+1cc to Mr.R.Raghavan, Advocate SR.No.60903

W.A. No. 88 of 2012

SSI(CO)
CB(11/01/2022)