IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. NO. 8064 OF 2008

Primus Retail Private Limited
Represented by its Company Secretary
having its Registered Office
at No.7, 1st Cross, 3rd Main
Ashwini Layout, Ejipura,
Bangalore - 560 047. ... Petitioner

-vs-

1. Union of India,
Represented by Secretary to Government,
Ministry of Finance,
New Delhi.

2. The Commissioner,
Central Exercise and Service Tax,
Nungambakkam High Road,
Chennai - 34.

3. M/s.Mallika Ravi ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Declaration declaring the provision of Section 65(90-a) and Section 65(105) (zzzz) of the Finance Act, 1994 is ultra vires and unconstitutional and unenforceable.

For Petitioner : Mr.A.Sakthivel
For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel for R1 & R2
No appearance for R3.

O R D E R

The relief sought for in the present Writ Petition is to declare the provision of Section 65(90-a) and Section 65(105) (zzzz) of the Finance Act, 1994 is ultra vires and unconstitutional and unenforceable.

2. The learned Senior Panel Counsel for the first and second

respondents made a submissions that several High Courts including the High Court of Madras disposed batch of Writ Petitions upholding the validity of the provision and dismissed the Writ Petitions in the case of G.V.Matheswaran vs. Union of India and batch reported in 2015 (37) S.T.R 881 (Madras). The relevant paragraphs of the Judgment are extracted hereunder:

> "90. Since this Court has already upheld the validity of the said provisions, W.P. No. 748 of 2009 fails and it is accordingly dismissed. However, the petitioner is at liberty to file its response to the impugned notice dated 20.11.2008, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such response, the first respondent is directed to consider and dispose of the same in accordance with law, as expeditiously as possible.
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> To sum up:
>
> - W.P. Nos. 4100 of 2010, 26458 of 2011, 26460 of 2011, 26012 of 2012 and 16400 of 2013 are dismissed with liberty to the petitioners to invoke the appeal remedy. If appeal is presented within 30 days from the date of receipt of a copy of this order, the same shall be entertained by the appellate authority and considered on merits without reference to limitation.
> - W.P. Nos. 8109 of 2009, 18795 of 2009, 23436 of 2010, 6875 of 2011, 22175 of 2011, 29125 and 29126 of 2011, 13656 of 2011, 26395 of 2011 and 13272 of 2013 and 13880 of 2013, filed challenging show cause notices, are dismissed. Similarly, W.P. Nos. 6114 of 2010, 3259 of 2011 and 20466 of 2011 which are filed seeking mandamus forbearing the first respondent from proceeding with the adjudication of the respective show cause notices, are also dismissed. However, the petitioners are given two weeks' time from the date of receipt of a copy of this order, to give reply to the show cause notices.
> - W.P. No.748 of 2009 is dismissed with liberty to the petitioner as indicated in paragraph no.90 above.
> - Rest of the writ petitions are dismissed.
> - If the petitioners had remitted / deposited any amount towards Service Tax by virtue of interim orders, those sums are to be adjusted at the time of adjudication. No costs. Connected Miscellaneous Petitions are closed."

3. In view of the judgment passed by the Hon'ble Division Bench of High Court of Madras cited supra, the present Writ Petition stands dismissed on the same terms. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

vji

To

1. The Secretary to Government,
    Union of India,
    Ministry of Finance,
    New Delhi.

2. The Commissioner,
    Central Exercise and Service Tax,
    Nungambakkam High Road,
    Chennai - 34.

+1cc to M/S.V.Sundareswaran, Advocate, SR.No.40968

W.P. No. 8064 of 2008

MG(CO)
PM(07/09/2021)