IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

C.M.A.No.1131 of 2018

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex,
No.692, Anna Salai,
Nandanam, Chennai - 600 035. ...Appellant

Vs

M/s.Sterling Holiday Resorts India Ltd.,
Taurus Towers, 25, I Main Road,
United India Colony,
Kodambakkam, Chennai - 600 035. ...Respondent

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, read with Section 83 of Finance Act, 1944 to consider the substantial questions of law raised by the appellant and set aside the Final Order No.41114/2017 dated 03.07.2017 passed in Appeal No.ST/269/2007-DB passed by the Hon'ble Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai against the passed by the Commissioner of Service Tax,chennai dated 29.08.2007 made in Original No.111 of 2007.

For Appellant: Mr.V.Sundareswaran, SSC
For Respondent: Mr.P.R.Renganath

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the appellant under Section 35G of Central Excise Act, is directed against the order dated 03.07.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai in Final Order No.41114/2017.

2. The appellant has raised the following substantial questions of law for consideration:

"1. Whether the Hon'ble CESTAT, Chennai is correct in closing this case for the purpose of statistics holding that the both sides are at liberty to file application before the Tribunal to reopen the matter as and when the case is disposed by the Hon'ble High Court or in case of any change of circumstance?

2. Whether the Hon'ble CESTAT, Chennai is correct in passing an Order that is not in consonance/conformity with the provisions of Section 35C of the Central Excise Act, 1944?"

3. We have heard Mr.V.Sundareswaran, learned Senior Standing Counsel for the appellant and Mr.P.R.Renganath, learned counsel appearing for the respondent.

4. The respondent-assessee has filed a writ of declaration to declare the provisions of Section 65(105)(zzze) and Section 67(3) of the Finance Act, 1994 as ultra vires Article 14, 19(1)(g) and 265 of the Constitution of India. The respondent-assessee has also filed a writ of prohibition to prohibit the Commissioner of Service Tax, Chennai from taking action pursuant to the Show Cause Notice No.212/07 dated 22.10.2007. The writ petitions were heard by the learned Single Bench and by order dated 09.03.2012, this Court directed that the personal hearing of the respondent-assessee scheduled to be held on 09.03.2012, shall not go on until further orders. When this matter was brought to the notice of the Tribunal, the Tribunal has disposed of the appeal by the impugned order with liberty to the parties to file an application to reopen the matter.

5. In our considered view, the correct approach would be to keep the appeal pending before the Tribunal, because the interim order is only to the effect that the personal hearing should not go on.

6. We are informed by the learned Senior Standing Counsel for the appellant that since a writ of declaration has been filed by the appellant, the matter has to be heard by a Division Bench and the writ petitions are also pending.

7. We are of the considered view that the appeal may be kept pending before the Tribunal and should not be disposed of till the writ petitions are disposed of in one way or another or if any interim orders are passed in the writ petitions.

8. With the above reasons, the appeal is allowed and the impugned order is set aside and the substantial question of law (i) is answered in favour of the Department and the appeal is restored to the file of the Tribunal awaiting the orders passed in the writ petitions, either interim or final orders. Consequently, the substantial question of law (ii) is left open. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

hvk

To

1. Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Chennai.

2. The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex,
No.692, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Commissioner of Service Tax,chennai.

+1cc to Mr.V.Sundareswaran, Advocate SR.No. 5985

A.SK(10.03.2021)