IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.02.2021

PRONOUNCED ON : 01.03.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.20250 OF 2016

(THROUGH VIDEO CONFERENCING)

Arulmighu dhandayuthapani Thirukoil
Rep.by its Executive Officer/Joint Commissioner
Palani 624 601. ...Petitioner

vs.

1.The Union of India
Represented by its Secretary to Govt.
Ministry of Finance,
Department of Revenue, New Delhi.

2.The Central Board of Excise and Customs
North Block, New Delhi 110 001.

3.The Commissioner of Income Tax,
O/o. The Commissioner of Income Tax (Exemptions)
Chennai.

4.The Assistant Commissioner,
Office of Assistant Commissioner of Central Excise,
Dindigul - II Division,
No.5, S.I.Complex Raace Course Road,
Dindigul 624 001. ...Respondents

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, declaring the petitioner institution is exempted from the purview of service tax in view of the Entry-34 of the Notification dated 20.06.2012 as amended by the notification dated 1.3.2016.

For Petitioner : Mr.Ramesh Venkatachalapathy
For R1 to R3 : Mr.A.P.Srinivas
Senior Standing Counsel
For R4 : Mr.T.Pramod Kumar Chopda

ORDER

Heard the learned counsel for the petitioner, learned Senior Standing counsel for R1 to R3 and the learned counsel for R4.

2. The Petitioner has filed the present writ petition for issuance of a Writ of declaration declaring that the petitioner was exempt from payment of tax in view of Entry No. 34 of Notification No. 25/ 2012-ST dated 20.6.2012.

3. The petitioner is a temple located in the famous palani hills. Its objects are charitable and religious in nature. One of the facility offered by the petitioner is to allow its devotees to visit the temple on the hills with the help of rope way car. It helps aged, disabled and physically challenged devotees visit the temple without difficulties. Entry No.23 exempted transport of passengers, with or without accompanied belongings, by-

> (a) air, embarking from or terminating in an approach located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
>
> (b) contract carriage for the transportation of passengers, excluding tourism, conducted to, charter or higher; or
>
> (c) ropeway, cable car or aerial Tram way.

4. This exemption vide Entry No. 23(c) to Notification No25 2012-ST dated 1.3.2016 which exempted the petitioner from payment of service tax for its ropeway service offered to its devotees was withdrawn by the Central Government vide Notification No.9/2016-ST dated 1.3.2016. Under these circumstances, the petitioner has prayed for a declaration that the petitioner is exempted in terms of Entry No.34 of Notification No. 25/ 2012-ST dated 20.6.2012.

5. Entry No.34 of Notification No.25/2012-ST dated 20.6.2012 applies to services received from a provider of service located in a non-taxable territory. It applies to the following categories of such services:-

> "34. Services received from a provider of service located in a non-taxable territory by-
>
> (a) Government, a local authority, a government authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under Section 12AA of the Income Tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

© a person located in a non-taxable territory."

6. It was intended exempt recipient of service in India for the services provided by a person located in a non-taxable territory. Therefore, the prayer in the petitioner is misplaced. No relief can be granted to the petitioner as prayed for. In fact, Entry No.34 of Notification No.25/ 2012-ST dated 20.6.2012 has remained untouched by the amending Notification No 9/2016-ST dated 1.3.2016.

7. It is however noticed that while admitting this writ petition on 18.7.2016, an interim relief was given to the petitioner by this Court by directing the third respondent to not to collect sales tax from the petitioner. Almost 3 ½ years have gone by since then.

8. Therefore, I extend this benefit for a period of another three months from the date of this order. The petitioner is directed to approach the second respondent, Central Board of Excise and Customs with a request for exempting it from payment of service tax for the period after issue of Notification No. 9/ 2016-ST dated 1.3.2016, within a period of 30 days from date of receipt of a copy of this order with a representation explaining its case for grant of exemption in public interest to it and to similarly placed person.

9. The second respondent shall consider such request of the petitioner on merits and issue appropriate notification and if the petitioner and similarly placed persons deserve exemption from payment of service tax with retrospective effect, it may issue appropriate notification in accordance with law. In case, the request of the petitioner is rejected, the jurisdictional officer are directed to initiate appropriate proceedings to recover service tax from the petitioner in accordance with law.

10. The writ petition is disposed with the above observation. No cost.



Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Secretary to Govt.
Union of India
Ministry of Finance,
Department of Revenue, New Delhi.

2.The Central Board of Excise and Customs
North Block, New Delhi 110 001.

3.The Commissioner of Income Tax,
O/o. The Commissioner of Income Tax (Exemptions)
Chennai.

4.The Assistant Commissioner,
Office of Assistant Commissioner of Central Excise,
Dindigul - II Division,
No.5, S.I.Complex Raace Course Road,
Dindigul 624 001.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.12143
+1cc to Mr.Sriram, Advocate, S.R.No.12625

Pre-delivery Order
in W.P.No.20250 of 2016

PL(CO)
KKV/19/03/2021