IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No. 4793 of 2018

and

W.M.P.No. 5935 of 2018

Vijaya Elangovan ... Petitioner

Vs

1. Deputy General Manager,
   Corporation Bank,
   Office at Ranga's West End
   NSR Road, T.S.No.12/20, Sai Baba Colony,
   Coimbatore - 641 001.

2. Branch Manager,
   Corporation Bank,
   No.175, Ground Floor,
   Bharathi Colony, Main Road,
   Peelamedu, Coimbatore - 641 004. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to pay the service tax for the premises at Northern Portion of Door No.175, Bharathi Colony, Main Road, Peelamedu, Coimbatore right from the date of tenancy namely 10.05.2014 continuing to pay till the expiry of tenancy including statutory obligation to Government of India (including interest).

For Petitioner : Mr.T.N.Rajagopalan
for Mr.V.Venkateseshan

For Respondents : Mr.N.Sivabalan

ORDER

The dispute in the present Writ Petition lies in a short compass to direct the respondents to pay the service tax for the premises at Northern Portion of Door No.175, Bharathi Colony, Main Road, Peelamedu, Coimbatore right from the date of tenancy namely 10.05.2014 continuing to pay till the expiry of tenancy including statutory obligation to Government of India (including interest).

2. The petitioner has rented out her property to the respondents Bank under a registered lease agreement dated 04.09.2014 for a period of ten years with effect from 10.05.2014. It is stated that under the Agreement, the respondents Bank is required to deduct tax under the provisions of the Income Tax Act, 1961 and Service Tax payable under Finance Act, 1994.

3. It is further submitted that though the lease Agreement has been signed undertaking to deduct and remit the tax directly, the respondents have failed to observe the aforesaid conditions of the Lease Agreement. Under these circumstances, the petitioner had sent notices on the respondents to pay service tax directly on the renting services availed from the petitioner. It is submitted that in their reply, the respondents have stated that the Lease Agreement has been tampered and therefore, there is no question of deducting tax and paying it.

4. The learned counsel for the petitioner has placed reliance on the recent decision of the Hon'ble Supreme Court in Union of India and others Vs Bengal Shrachi Housing Development Limited and another, (2018) 1 SCC 311, wherein, while dealing with an identical situation, the Hon'ble Supreme Court held as follows:-

> "36. This being the case, though in law and under Clause 6 of the lease deed the appellant is not required to pay service tax, we are loathe to upset the finding of the learned Single Judge based upon a letter by the appellant to the respondent in which the appellant has expressly stated that it was liable to pay service charges. Having thus clarified the legal position, given the sanction letter of 27-4-2012 and the letter dated 30-4-2012, in which it was made clear that the Union of India alone will bear the service charges, we refuse to exercise our discretion under Article 136 of the Constitution of India in favour of the Union of India. Thus, the impugned Division Bench judgment is set aside on law, but the appeal fails on the facts of the present case."

The said order came to be passed by the Hon'ble Supreme Court in the context of the Finance Act, 1994, as in force with effect from 10.05.2014 read with Rule 2 (1) (d) (i) (E) of the Service Tax Rules, 1994.

5. Heard the learned counsel for the petitioner and the respondents. There is no merit in this Writ Petition in as much as the writ court cannot get into the disputed question as to whether the lease agreement has been tampered or not.

6. That apart, under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994, there is an exception to general rule, whereby, recipient of service is liable to pay service tax on reverse charge basis. The service tax is not applicable under the facts and circumstances of the case.

7. Rule 2(1)(d)(i)(E) of the Service Tax Rules reads as under:-

Rule 2(1)(d): "person liable for paying the service tax", -

(i) in respect of the taxable services notified under sub-section (2) of Section 68 of the Act, means, -

(E) in relation to services provided or agreed to be provided by Government or local authority except, -

(a) renting of immovable property, and
(b) services specified under sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory, the recipient of such service.

8. Rule 2(1)(d)(i)(E) applies only to a situation where taxable services are provided or agreed to be provided by the Government or local authority to any business entity located in the taxable territory. Only under those circumstances, such recipient namely the business entity is required to pay service tax on reverse charge basis. Even otherwise, renting of immovable property and the service specified under sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act, 1994 are outside the purview of Rule 2(1)(d)(i)(E) of Service Tax Rules, 1994.

9. As the petitioner is neither Government nor the local authority, reliance cannot be placed on the decision of the Hon'ble Supreme Court in Union of India and Others Vs. Bengal Shrachi Housing Development Limited and Another, (2018) 1 SCC 311. In Bengal Shrachi Housing Development Limited case referred to supra, the renting of immovable property service was provided by Bengal Shrachi Housing Development Limited to the Union of India. Thus, by referring to Rule 2(1)(d)(i)(E) of the Service Tax Rules, 1994, it was held that the service tax was payable by

the lessee Union of India as recipient of service. The Hon'ble Supreme Court thus dismissed the appeal filed by the Union of India.

10. Neither the provision referred by the learned counsel for the petitioner nor the above decision of the Hon'ble Supreme Court cited by the learned counsel for the petitioner are relevant to the facts of the present case, I find therefore no merits in the present Writ Petition. Therefore, this Writ Petition is liable to be dismissed. At the same time, liberty is given to the petitioner to work out her remedy against the respondents in accordance with law before a Civil Court.

11. Accordingly, this Writ Petition is dismissed with the above observations. No cost. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arb

+1cc to Mr.MV.VENKATASESHAN, Advocate, S.R.No.2999
+1cc to Mr.S. SETHURAMAN, Advocate, S.R.No.3627

PVS(CO)
SM/24/02/2021

W.P.No. 4793 of 2018
and
W.M.P.No. 5935 of 2018