IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-07-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.11332 of 2018
And
WMP No.13231 of 2018

M/s.Shriram Chits Tamil Nadu Private Limited,
Represented by its Executive Director,
Mr.N.Mani,
Greams Dugar, 4th Floor,
149, Greams Road,
Chennai-600 006. .. Petitioner

vs.

The Assistant Commissioner,
The Office of the Assistant Commissioner of
GST and Central Excise,
Mylapore Division,
North Commissionerate,
26/1, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records in file bearing File No.C.No.V/15/31/2018-Adj comprising show cause notice N.18/2018 dated 19.04.2018 on the file of the respondent and quash the same.

For Petitioner : Mr.S.Muthuvenkataraman

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel.

O R D E R

Heard Mr.S.Muthuvenkataraman, learned counsel, appearing on behalf of the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the show cause notice dated 19.04.2018 issued by the Respondent levying service tax on the commission paid to the petitioner as foreman of chit fund business.

3. It is brought to the notice of this Court by the learned counsel for the petitioner that the Hon'ble Supreme Court of India in Union of India -vs Margadarshi Chit Funds (P) Ltd., [(2017) 13 SCC 806] has held that service tax cannot be levied on the foreman of chit fund business for the period from 15.06.2007 to 14.06.2015 and relevant passages from that decision are extracted below:-

> "23. ....By the aforesaid amendment, activity carried out by foreman of a chit fund for conducting or organising a chit in any manner is to be covered by the expression "transaction in money or actionable claim". Thus, it has been brought specifically within the definition of "service" by the aforesaid amendment which takes effect from 15-6-2015. Therefore, there is no dispute that w.e.f. 15-6-2015, service tax is payable on chit fund.
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> 24. The aforesaid historical background would demonstrate that admittedly up to 14-6-2007, chit fund business was not exigible to service tax. Likewise, from 1-7-2012 to 14-6-2015, no service tax was payable. Present dispute concerns the intervening period from 15-6-2007 to 30-6-2012, the outcome whereof depends upon the definition of "banking and financial service" contained in clause (12) of Section 65 of the Act and particularly sub-clause (v) thereof as amended in 2007."

It is submitted that inasmuch as service tax has been levied on the commission paid to the petitioner, which falls during the period, for which service tax could not be levied, the impugned order cannot be sustained.

4. Having regard to the said authoritative pronouncement of the Hon'ble Supreme Court of India which holds the field, it is not possible to sustain the impugned order, which shall stand set aside. The respondent shall not be entitled to recover the service tax demanded from the petitioner in the impugned order.

5. In the result, the writ petition is ordered on the aforesaid terms. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //
Sub Assistant Registrar

Svn

To

The Assistant Commissioner,
The Office of the Assistant Commissioner of
GST and Central Excise,
Mylapore Division,
North Commissionerate,
26/1, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

+1CC to Mr.A.P.Srinivas, Advocate, SR.No. 36002

WP No.11332 of 2018

SMI(CO)
B.VC (25/08/2021)