IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

WP Nos.11388 and 11389 of 2011

M/s.Mothari Industrial Corporation Ltd
rep. by its Senior General manager,
Mr.G.Mohan Das : Petitioner in both writ petitions

Vs

1.The Union of India,
rep. by the Secretary to Government,
Ministry of Finance,
Department of Revenue, New Delhi

2.The Commissioner of Service Tax,
Office of the Commissioner of Service Tax
MHU Complex, 692, Anna Salai,
Nandanam, Chennai 35 : Respondents in both writ petitions

Prayer: WP No.11388 of 2011 filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring the impugned provisions viz. Section 65(90a) and Section 65(105) (zzzz) of the Finance Act, 1994 as amended by Finance Act, 2007 as ultra vires Entry 18 and Entries 45, 49 of List II of Schedule VII of the Constitution of India and read with Entry 97 of List - I of Schedule VII of the Constitution of India and/or Article 19 (1)(g) of the Constitution of India and/or Section 66 of the Finance Act 1994.

WP No.11389 of 2011 filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring Section 65(55a) and Section

65(55b) read with section 65(105) (zzz) of the Finance Act, 1994 defining the Intellectual Property and Intellectual Property service resulting in treating transfer of right to use intellectual property viz. trade mark, patent etc which are goods to be a taxable service thereby providing for levy of tax on transfer of right to use good as *ultra vires* Articles 14, 19(i)(g) and 265 of the Constitution of India inasmuch as the transfer of right to use is deemed to be sale falling within the exclusive domain of state legislature.

For Petitioner : Mr.K.Magesh

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor-General,
assisted by Mr.Sundreswaran,
Senior Panel Counsel

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COMMON ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.K.Magesh, learned counsel for the petitioner and Mr.AR.L.Sundaresan, learned Additional Solicitor-General, for the respondents.

2. Learned Additional Solicitor-General submits that so far as the issue with regard to letting of the immovable properties is concerned, the same is decided by a Division Bench of this Court in the case of ***G.V.Matheswaran vs. Union of India & Ors. Reported in (2015) 86 VST 433***. Learned counsel for the petitioner accedes to the same.

3. Learned counsel for the petitioner further submits that the challenge to the provisions may be kept open, to be agitated in an appropriate petition. The same would not be pressed in this writ petition.

4. In view of the aforesaid, the writ petitions are disposed of. There shall be no order as to costs.

(S.V.G., CJ.) (J.S.N.P., J.)
17.04.2024

Index : Yes/No
Neutral Citation : Yes/No
tar

To

1.The Secretary to Government,
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MHU Complex, 692, Anna Salai,
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THE HON'BLE CHIEF JUSTICE

AND

J.SATHYA NARAYANA PRASAD, J.

(tar)

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