IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.13356 of 2007 and 48633 of 2006

W.P.No.13356 of 2007:

M/s.Kader Exports Pvt. Ltd.,
Having Administrative Office at
3/284, Muttukadu Road,
Neelankarai, Chennai-600 041. .. Petitioner

vs

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

2.The Commissioner of Income Tax,
Central Circle-I,
Old CGO Building, Annexe, M.K.Marg,
Mumbai-400 020.

3.The Assistant Commissioner of Income Tax,
Central Circle 5,
Old CGO Building, Annexe, M.K.Marg,
Mumbai-400 020. .. Respondents

W.P.No.48633 of 2006:

V.S.Exim Private Ltd.,
B-401, Raheja Regency,
R.A.Puram,
Chennai-600 028. .. Petitioner

vs

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

2.The Chief Commissioner of Income Tax,
121, Uttamar Gandhi Salai,
Chennai-600 0034.

3.The Commissioner of Income Tax,
Company Circle,
121, Uttamar Gandhi Salai,
Chennai-600 0034.

4.The Assistant Commissioner of Income Tax,
Company Circle III(4),
121, Uttamar Gandhi Salai,
Chennai-600 0034. .. Respondents

Prayer in W.P.No.13356 of 2007 : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that provision under Section 3 and 4 of the Taxation Laws (Amendment) Act, 2005, in so far as it seeks to deny the deduction under Section 80HHC in respect of profits on sale of DEPB scrips in case of the exporters having export turnover exceeding Rs.10 crores with retrospective effect, as ultra vires the Constitution of India.

Prayer in W.P.No.48633 of 2006 : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring that provision under Section 3 and 4 of the Taxation Laws (Amendment) Act, 2005, in so far as it seeks to deny the deduction under Section 80HHC in respect of profits on sale of DEPB scrips in case of the exporters having export turnover exceeding Rs.10 crores with retrospective effect, as ultra vires Articles 14, 19(1), 246(1), 265 and 301 of the Constitution of India and therefore unenforceable and of no effect in so far as the petitioners herein are concerned.

For the Petitioners	:	Mr.T.Ramesh
For the Respondents	:	Mr.A.Kumaraguru Sr. Panel Counsel for respondent No.1 in both WPs
	:	Mr.ANR Jayaprathap Jr. Standing Counsel for respondents 2 and 3 in W.P.No.13356 of 2007 and respondents 2 to 4 in W.P.No.48633 of 2006

COMMON ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.T.Ramesh, learned counsel for the petitioners; Mr.A.Kumaraguru, learned Senior Panel Counsel for the first respondent in both the writ petitions; and, Mr.ANR

Jayaprathap, learned Junior Standing Counsel for respondents 2 and 3 in W.P.No13356 of 2007 and respondents 2 to 4 in W.P.No.48633 of 2006.

2. The petitioners are seeking declaration that the provision under Section 3 and 4 of the Taxation Laws (Amendment) Act, 2005 in so far as it seeks to deny the deduction under Section 80HHC in respect of profits on sale of DEPB scrips in case of the exporters having export turnover exceeding Rs.10 crore with retrospective effect is *ultra vires* the Constitution of India.

3. Learned counsel for the petitioners and learned counsel for the Department are *ad idem* that the issue is no longer *res integra* and the same has been decided by the Apex Court in the case of *Commissioner of Income Tax-5 and another v. Avani Exports and another, (2016) 16 SCC 741*.

4. In the light of that, the writ petitions are allowed in terms

of the judgment of the Apex Court in the case of *Avani Exports*, supra. There shall be no order as to costs. Consequently, M.P.Nos.1 of 2006 and 1 of 2007 are closed.

(S.V.G., CJ.) (D.B.C., J.)
21.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Secretary,
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Department of Revenue,
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2.The Commissioner of Income Tax,
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Mumbai-400 020.

3.The Assistant Commissioner of Income Tax,
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121, Uttamar Gandhi Salai, Chennai-600 0034.

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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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