IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

W.P.Nos.10229 and 10230 of 2008
& M.P.Nos.1 and 1 of 2008

M/s Tractors and Farm Equipments Limited
Represented by its Head Indirect Taxation,
Mr.K.Guruswamy,
Having its Administrative Office at
No.35, Nungambakkam High Road,
Chennai 600034.

... Petitioner in both W.P.'s

Vs

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

2. The Central Board of Excise & Customs,
   North Block, Ministry of Finance,
   Department of Revenue,
   Government of India,
   New Delhi.

3. Commissioner of Service Tax
MHU Complex, 692, Anna Salai,
Nandanam, Chennai-35 ... Respondents in both W.P.'s

PRAYER in W.P.No.10229 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records comprised in show cause notice No.100/2008 dated 09.04.2008 on the file of the third respondent, quash the same.

PRAYER in W.P.No.10230 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, to declare that Explanation to Sec.65(105) of the Finance Act, 1994, read with amended Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 coming into effect from 16.6.2005 is ultra vires Sections 64, 65, 66, 67 and 68 of the Finance Act, 1994 and Art. 265 of the Constitution of India and therefore requires to be declared invalid.

In both W.P.'s
For Petitioner : Ms.Krithika Jagannathan
for M/s.Lakshmi Kumaran & Sridharan

For Respondents : Mr.R.P.Pragadesh
Senior Standing Counsel

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

Heard Ms.Krithika Jagannathan, learned counsel for M/s.Lakshmi Kumaran & Sridharan, learned counsel for the petitioner and Mr.R.P.Pragadesh, learned Senior Standing Counsel for the respondents.

2. This common order disposes both the Writ Petitions filed, W.P.Nos.10229

and 10230 of 2008. In the former, a declaration is sought declaring the Explanation to Section 65 (105) of the Finance Act, 1994 read with amended Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 as ultra vires the provisions of the Finance Act, 1994 and Article 265 of the Constitution of India.

3. Both learned counsel would draw attention of the Court to a decision of the Bombay High Court in *Indian National Shipowners Association V. Union of India* ((2009) 21 VST 60) where the ourt has held that there could be no charge on receipts towards services rendered outside India in the absence of a charging provision. Rule 2(1)(d)(iv) cannot purport to impose such charge. The Explanation that was inserted with effect from 16.06.2005 provides clarity on the nature of services provided and hence this too, can by no stretch of the imagination, be taken to be a charging provision.

4. It is only with the enactment of Section 66-A, inserted vide Finance Act, 2006, with effect from 18.04.2006 that, for the first time, the Finance Act, 1994 contained a provision to bring to tax those receipts from services rendered outside India. The Special Leave Petition filed by the Union of India challenging the order of the Bombay High Court has been dismissed by the Hon'ble Supreme Court on 14.12.2009. With this, the prayer for declaration is liable to be accepted.

5. Coming to W.P.No.10229 of 2008, the challenge is to a show cause notice

which spans the periods 2003-04, 2004-05, 2005-06 and 2006-07 and contains proposals to bring to tax receipts for rendition of services abroad. With our decision in W.P.No.10230 of 2008, there is no merit in the show cause notice insofar as it relates to the periods 2003-04, 2004-05 and 2005-06. However, the notice will survive qua the period 18.04.2006 onwards.

6. Learned counsel for the petitioner would attempt to make some submissions on the merits or otherwise of the proposals contained in the show cause notice. However, we are not inclined to entertain the same, seeing as we are of the considered view that the challenge is pre-mature as far as notice dated 09.04.2008 is concerned qua the period 2006-07. Suffice it to say that all contentions are left open and the petitioner is given full liberty to submit a reply to show cause notice dated 09.04.2008 within a period of four (4) weeks from today along with necessary enclosures.

7. Upon receipt of such reply, if filed within the aforesaid stipulated time, the respondent shall issue notice of hearing to the petitioner, hear the petitioner and conclude the proceedings expeditiously.

8. It is made clear that full liberty is given to the respondents as well, to proceed with the matter in accordance with law. The proceedings shall be completed within a period of twelve (12) weeks from today.

9. In light of the above, W.P.No.10230 of 2008 is allowed and W.P.No.10229 of 2008 is disposed with liberty. No costs. Connected Miscellaneous petitions are closed.

(A.S.M.,J) (G.A.M.,J)
13.08.2024

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

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

2. The Central Board of Excise & Customs,
   North Block, Ministry of Finance,
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   MHU Complex, 692, Anna Salai,
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