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.No.2490 of 2007

M/s.GDJD Exports,
No.3, Nowroji Road,
Krishnormi,
Chetput, Chennai-600 031
rep. by its Partner Bharatkumar K. Shah. .. Petitioner

vs

1.The Income Tax Officer,
Business Ward XV (4),
121, Nungambakkam High Road,
Chennai-600 034.

2.The Union of India,
rep. by the Secretary to Government,
Ministry of Finance, Department of Revenue,
Central Secretariat, North Block,
Government of India,
New Delhi-110 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of declaration declaring the provisions of Sections 28 and 80HHC by the Taxation Law (Amendment) Act 2005 ultra vires and violative of Articles 14, 19(1)(g), 246(1), 265 and 301 of the Constitution of India in so far as it seeks to deny the deduction u/s 80 HHC in respect of profit on sale of DEPB in case of exporter having export turnover exceeding Rs.10 crores.

For the Petitioner	:	Ms.Mallika Srinivasan
For the Respondents	:	Mr.ANR Jayaprathap Standing Counsel for respondent No.1
	:	Mr.A.Kumaraguru Sr. Panel Counsel for respondent No.2

ORDER

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

We have heard Ms.Mallika Srinivasan, learned counsel for the petitioner; Mr.ANR Jayaprathap, learned Standing Counsel for respondent No.1; and, Mr.A.Kumaraguru, learned Senior Panel Counsel for respondent No.2.

2. The petitioner is seeking declaration that the provision under Sections 28 and 80HHC 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 petitioner 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 present writ petition is 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.No.1 of 2007 is closed.

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

21.03.2024

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

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2.The Secretary to Government,
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Ministry of Finance, Department of Revenue,
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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