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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM :

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

W.P.No.36515 of 2006

M/s. All India Skin Hide Tanners
and Merchants Association
"Leather Centre"
53, Sydenhams Road
Chennai 600 003. .. Petitioner

Vs.

1. Union of India
Rep. by the Secretary
Department of Revenue
North Block
New Delhi 110 001.

2. The Chairman
Central Board of Excise and Customs
North Block
New Delhi 110 001.

3. The Chief Commissioner of Central Excise
26/1, Uthamar Gandhi Salai
Chennai 600 034. .. Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Declaration to declare the provisions of the Explanation under Section 65(105) of the Finance Act, 1994, introduced by Finance Act, 2005 and the provisions of the Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 and notified under Notification No.23 of 2005 ST dated 07/06/2005 as being ultra vires the provisions of Finance Act, 1994 and Article 14, 19(1)(g), 245 and 265 of the Constitution of India insofar as the members of the petitioner association are concerned.

For the Petitioner	:	Mr.N.Prasad Assisted by Mr.C.Subramanian
For the Respondents	:	Mr.Rajish Pathiyil Senior Panel Counsel

ORDER
(Made by the Hon'ble Chief Justice)

We have heard Mr.N.Prasad, learned counsel, assisted by Mr.C.Subramanian, learned counsel for the petitioner and Mr.Rajnish Pathiyil, learned Senior Panel Counsel for the respondents.

2. The petitioner is challenging the Explanation under Section

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65(105) of the Finance Act, 1994, introduced by the Finance Act, 2005 and the provisions of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 as ultra vires.

3. Learned counsel for the petitioner and learned counsel for the respondents are *ad idem* that the Supreme Court has held that this amendment, which is prospective in nature, will not apply prior to 18.04.2006. Reliance can be had to the judgment of the Apex Court in the case of *Commissioner of Service Tax v. Sojitz Corporation [2022 (65) G.S.T.L. 130 (S.C.)]*.

4. Learned counsel for the petitioner submits that the tax paid by the petitioner pursuant to the said amendment is assailed in the present writ petition and the same be refunded as it is prior to 18.04.2006.

5. Learned counsel for the respondents submits that the petitioner would not be entitled to the refund.

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6. The petitioner may agitate the same before the authority concerned. As various aspects will have to be considered while entertaining the prayer for refund, the petitioner may apply to the authority concerned. Upon an application being made by the petitioner, the authority concerned shall take decision upon it on its own merits, preferably within six months from the date of receipt of the application.

7. The respondents would not be entitled to recover any amount prior to 18.04.2006.

8. The writ petition is disposed of. There shall be no order as to costs.

(S.V.G., CJ.) (J.S.N.P., J.)
16.04.2024

Index : Yes/No
Neutral Citation : Yes/No

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To

1. The Secretary
   Department of Revenue
   North Block
   New Delhi 110 001.

2. The Chairman
   Central Board of Excise and Customs
   North Block
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3. The Chief Commissioner of Central Excise
   26/1, Uthamar Gandhi Salai
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THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD, J

(kpl)

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