IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.1484 of 2021

The Commissioner of GST & Central Excise
Chennai South Commissionerate
6th Floor, MHU Complex
692, Anna Salai, Nandanam
Chennai – 600 035. .. Appellant

Vs.

M/s. View Max
Rep. By its proprietor M.Ramavidyadharan
No.26/52, Balaji Bhavan, 48th Street
9th Avenue, Ashok Nagar
Chennai – 600 083. .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P.No.7674 of 2021 dated 25.03.2021.

For the Appellant : Mr.Su.Srinivasan
Senior Standing Counsel

For the Respondent : Ms.R.Sri Viswapriya
for M/s.J.Shankaraman

JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This appeal has been directed against the order of the Writ Court made in W.P.No.7674 of 2021 dated 25.03.2021 in the case of ***M/s. View Max vs. The Commissioner of GST & Central Excise***.

2. We have perused the order which is impugned herein. In fact, the respondent dealer sought exemption from paying the service tax in terms of Section 66D(g) of the Finance Act, 1984, by replying to the show-cause notice dated 08.09.2018, quoting this provision and also citing the proceedings where similar cases such exemption has been given, the respondent dealer has sought such exemption.

3. However, while passing the order, the Revenue has not considered those aspects and therefore, the learned Single Judge, *prima facie*, felt at the admission stage of the writ petition that there has been an erroneous approach on the part of the Assessing Authority and in order to get instructions from the Revenue, it was adjourned.

4. During the final hearing, though the argument seems to have been made by the learned Senior Standing Counsel for the Revenue, who was the respondent before the Writ Court, that the cases cited by the assessee do not support the case of the assessee and it goes in favour of the Revenue and on that score, the learned Senior Standing Counsel sought dismissal of the writ

petition, that position has not been accepted by the Writ Court for the reason that in those cases, the tax had been collected and it has not been paid. Therefore, the facts cannot be fit-in into the facts of the present case, and moreover, such a decision has not been made by the Assessing Authority while passing the order, taking note of the earlier precedents as has been sought to be compared and considered by the assessee dealer and that is the reason why, the learned Single Judge in paragraphs 5 and 6 of the impugned order has remitted the matter back to the original Assessing Authority to reconsider the same and to pass fresh orders, of course, by taking into account the ratio of the order in M/s. ***Chennai Digital Print Advertising Pvt. Ltd. vs. The Additional Commissioner of GST and Central Excise, Chennai North Commissionerate*** vide Order-in-Original No.9/2017(C.N.) dated 11.09.2017 as well as any other order passed by the Coordinate Officer on that issue.

5. The said remand order is only now being challenged in the present Intra Court appeal and therefore, we do not find any merit in the appeal. In the order that has been passed by the Writ Court, impugned herein, which we have gone through, found that the approach of the learned Single Judge is to be accepted.

6. Resultantly, the Intra Court appeal fails and hence, it is liable to be dismissed. Accordingly, the writ appeal stands dismissed. There shall be no order as to costs. Consequently, W.M.P.No.9458 of 2021 is closed.

(R.S.K., J.) (C.S.N, J)
13.11.2024

Neutral Citation:Yes/No

drm

R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

W.A.No.1484 of 2021

13.11.2024