BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.8859 of 2018 and 21628 of 2022
and
W.M.P.(MD) Nos.8283 of 2018 and 15760 of 2022

W.P.(MD) No.8859 of 2018:

Ambika Cotton Mills Limited,
rep. by its Chairman cum Managing Director,
P.V.Chandran ... Petitioner

/vs./

1.Union of India
rep by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

2.Superintendent (Audit),
Office of the Assistant Commissioner of GST &
Central Excise Audit Circle,
Central Revenue Building,
Bibikulam,
Madurai 625 002.

3.Senior Intelligence Officer,
Directorate General of Goods and Services
Tax Intelligence,
Madurai Regional Unit,
No.4, Sri Lakshmi Complex,
P & T Nagar Main Road,
Opp.AR. Hospital,
Madurai 625 014. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring Notification No.1/2017 dated 12/01/2017 and Notification No.15/2017 service Tax dated 13/04/2017 issued by the 1st respondent as unconstitutional and ultra Vires and quash these Notifications.

For Petitioner : Mr.Joseph Prabakar

For R1 : Mr.J.Jeyasingh

For R2 & R3 : Mr.N.Dilip Kumar
Senior Standing Counsel

W.P.(MD) No.21628 of 2022:

Ambika Cotton Mills Limited,
Old No.9A/New 5No.15
Valluvar Street,
Sivananda Colony,
Coimbatore 641 012 ... Petitioner

/vs./

1.Deputy Director,
Directorate General of Goods and Services
Tax Intelligence,
Madurai Regional Unit,
No.4, Sri Lakshmi Complex,
P & T Nagar Main Road,
Madurai 625 014.

2.The Assistant Commissioner of Central Excise and GST,
Dindigul I Range,
No.5/30, NGO Colony,
Dindigul 624 005.

3.Deputy Commissioner of Central Excise and GST,
Coimbatore III Division,
Coimbatore Commissionerate,
No.1441, ELGI,
Trichy Road,
Coimbatore 641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to Demand-Cum Show Cause Notice No.06/2022-ST dated 04.08.2022 in File No.INV/DGGI/MRU/22/2018-ST, OR No.06/2022-ST dated 08.06.2022 carrying CBIN-DIN-202208DSS30000819582 on the file of the 1st respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

2.The issue is now covered by a decision of the Division Bench of Gurajat High Court in ***Sal Steel Limited Vs. Union of India*** reported in ***(2020) 37 GSTL 3***, which view was followed by this Court in a batch of writ petitions in ***The Chennai and Ennore Ports Steamer Agents Association Vs. Union of India, Ministry of Finance, New Delhi and others*** reported in ***2023-VIL-293-MAD-ST***.

3.In the same order, the issue relating to leviability of service tax was also considered in length and answered in favour of the assessees. Operative portion of the order passed by this Court reads as under:

> *"164.n the result, it is held as follow:-*
>
> *i. The challenges to Section 66(2) of the Finance Act, 1994, impugned Circular No.206/4/2017 – Service Tax, dated 13.04.2017 and impugned Notifications issued by the Central Government under the provisions of the Finance Act, 1994 fail. Therefore, Writ Petitions in Table, 1,2,3 4 are liable to be dismissed and are accordingly dismissed.*
>
> *ii. These petitioners are however not the recipient of service for the purpose of the impugned Notification No.3/2017- ST dated*

12.01.2017 amending Notification No.30/2012- ST dated 20.06.2012 issued under Section 68(2) of the Finance Act,1994.

iii. Therefore, there is no scope for demanding service tax from these petitioners in view of the defects pointed out in the impugned Notification No.3/2017-ST dated 12.01.2017 amending Notification No.30/2012-ST dated 20.06.2012 issued under Section 68(2) of the Finance Act,1994. Therefore, there is no justification in the impugned Show Cause Notices in Table-5. These show cause notices are therefore quashed.

iv. The respondents shall also not issue any show cause notices to the importers and steamer agents for the period covered by this order ie. for the period between 22.01.2017 and 30.06.2017 for similar activity.

v. As far as refunds in Table 6 are concerned, the petitioners are directed to file refund claims within 30 days from the date of receipt of a copy of this order, if no claim has already been made.

vi. All the refund claims shall be disposed of within a period of 60 days or 90 days, as the case may be, in accordance with the law laid down by the Hon'ble Supreme Court in Mafatlal Industries Private Limited vs. Union of India, 1997 (89) E.L.T.(S.C.) - 1996-VIL-01-SC-CE.

165. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed."

4.In the said order, several decisions of this Court and that of the other Courts were considered while coming to a conclusion that there is no justification levy of service tax on the ocean freight.

5.Accordingly, W.P.(MD) No.8859 of 2018 stands closed and W.P.(MD) No.21628 of 2022 stands allowed. The impugned show cause notice No.6/2022-ST dated 04.08.2022 bearing Ref.F.No.INV/DGGI/MRU/22/2018-ST is hereby is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

05.06.2024

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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W.P.(MD) Nos.8859 of 2018 and 21628 of 2022

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