(2015) 09 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 4171 of 2011

Federation of Surat Textile Traders'' Association APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Finance Act, 1994 — Section 65, 65(105)(zzze), 65(105)(zzzm), 65(25a), 66

Citation : (2015) 52 GST 983

Hon'ble Judges : Harsha Devani and Abdullah Gulamahmed Uraizee, JJ.

Bench : Division Bench

Advocate : Paresh M. Dave, Advocate, for the Appellant; Gaurang H. Bhatt, Senior Standing Counsel and Nikunt K. Raval, Standing Counsel, for the Respondent

Judgement

Harsha Devani, J.—By this petition under Article 226 of the Constitution of India, the petitioners have challenged the show-cause notices produced at Annexures H, J and I by the respondents to the extent the same seek to levy service tax under section 65(105)(zzze) of the Finance Act, 1994 (hereinafter referred to as "the Act") on the members of the petitioner Federation. The first petitioner - Federation is an association registered as a non-trading Corporation and has about 100 members who are all textile markets located in and around Surat. The members of the federation are associations of various buildings and premises wherein shops of each textile market associations are located in various buildings and premises which are managed by the concerned building associations. The building/market associations have been looking after maintenance and upkeepment of the buildings and premises wherein the shops of their members are located for the last several years. By virtue of section 65(25a) of the Finance Act, 1994, a category called "Club and Association Service" has been brought under the service tax net with effect from 16th June, 2005. Section 65(105)(zzze) defines "taxable service" to mean any service provided by any club or association to its members in relation to provision of services, facilities or advantages for a subscription or any other amount. Section 65(25a) of the Finance Act defines the term "Club or Association". A show-cause notice dated 3rd August, 2010 (Annexure ''J'' to the petition) came to be served upon the second respondent herein as regards maintenance activities of the building of J.J. Air-conditioned Textile Market seeking to recover service tax with interest and penalty for the period from July, 2005 onwards. Various contentions have been raised in the petition disputing the liability of the members of the petitioner Federation to pay service tax under the said provision. However, it is not necessary to enter into any discussion in respect thereof, in view of the following.

2. Mr. Paresh Dave, learned advocate for the petitioners has drawn the attention of the court to the impugned show-cause notice to point out that the same seeks to levy service tax under section 65(105)(zzze) of the Act in relation to the service provided to its members by the service provider and also seeks to levy service tax in respect of taxable service "Sale of space or time for advertisement" in terms of section 65(105)(zzzm) . It was submitted that the grievance in the petition is restricted to the extent service tax is sought to be levied under section 65(105)(zzze) of the Finance Act. Reference was made to the decision of this court in the case of Sports Club of Gujarat Ltd. v. Union of India, [2013] 35 taxmann.com 557/40 STT 486 (Guj.) wherein this court has declared that section 65(25a) , section 65(105)(zzze) and section 66 of the Finance Act, 1994 as incorporated/amended by the Finance Act, 2005 to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club (the petitioner therein) to its members, to be ultra vires. It was submitted that the above referred decision would be squarely applicable to the facts of the present case and hence, the show-cause notice to the extent the same seeks to levy service tax under section 65(105)(zzze) of the Finance Act is required to be quashed and set aside.

3. On the other hand, Mr. Gaurang Bhatt, learned senior standing counsel for the respondents invited the attention of the court to the explanation to section 65 of the Finance Act which provides that for the purpose of the section, taxable service includes any taxable service provided or to be provided by any incorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration. It was submitted that this court in the case of Sports Club of Gujarat Ltd. (supra) as well as in the case of Green Environment Services Cooperative Society Ltd. Vs. Union of India--> wherein this court has followed its earlier decision and has set aside the order impugned therein, has not taken into consideration the said provision. It was further submitted that against the judgment of this court in the case of Sports Club of Gujarat Ltd. {supra) as well as in the case of Green Environment Services Cooperative Society Ltd. {supra), the Union of India has preferred appeals before the Supreme Court, which are pending consideration.

4. The controversy involved in the present case lies in a very narrow compass, inasmuch as, the petitioners seek to challenge the impugned show-cause notice

dated 3rd August, 2010 (Annexure ''J'' to the petition) qua M/s. J.J. Air-conditioned Textile Market Association only to the extent the same seeks to invoke the provisions of section 65(105)(zzze) of the Finance Act. This court in the case of Sports Club of Gujarat Ltd. {supra) has agreed with the view taken by the Jharkhand High Court in Ranchi Club Ltd. Vs. Chief Commissioner of Central Excise and Service Tax, Ranchi Zone and Others, and has held section 65(25a) , 65(105)(zzze) and section 66 of the Finance Act, 1994 to be ultra vires and beyond the legislative competence of Parliament. The above decision in the case of Sports Club of Gujarat Ltd. {supra) has been followed by this court in the case of Green Environment Services Cooperative Society Ltd. {supra). While it is the case of the respondents that against the above decisions, appeals have been preferred before the Supreme Court, nothing has been pointed out to show that such appeals are admitted or that any interim relief has been granted therein. Under the circumstances, the controversy involved in the present case, to the extent the respondents seek to invoke the provisions of section 65(105)(zzze) of the Finance Act qua the members of the petitioner, stands concluded by the above decisions of this court wherein the said provision has been declared ultra vires and unconstitutional and hence, to that extent the impugned show-cause notice is without authority of law and, therefore, cannot be sustained. For the foregoing reasons, the petition partly succeeds and is accordingly allowed to the following extent. The impugned show-cause notice dated 3rd August, 2010 issued under section 73(1) of the Finance Act, 1994 is hereby quashed and set aside to the extent the same seeks to invoke the provisions of section 65(105)(zzze) of the Finance Act qua the noticee therein. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.