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W.A.No.910 of 2020

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 18.09.2024**

**CORAM:**

**THE HON'BLE MR. JUSTICE R.SURESH KUMAR  
and  
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.A.No.910 of 2020  
and C.M.P.No.11205 of 2020**

- 1.The Designated Committee under Sabka Viswas Legacy  
Dispute Resolution Scheme, 2019  
(Joint Commissioner of GST and Central Excise and  
Assistant Commissioner of GST and Central Excise)  
Chennai South Commissionerate,  
MHU Buildings, No.692, Anna Salai,  
Nandanam, Chennai 600 035.
2. The Commissioner of Service Tax (Appeal-II)  
Newry Towers 2054, I Block,  
2<sup>nd</sup> Avenue, 12<sup>th</sup> Main Road,  
Anna Nagar West, Chennai 600 040.

...Appellants

Versus

M/s.Navin Housing and Properties (P) Limited,  
Rep.by its Executive Director.

...Respondent

**Prayer** : Appeal is preferred under Clause 15 of the Letters Patent, against  
the order of this Court passed in W.P.No.477 of 2020 dated 27.07.2020.

For Appellants : M/s.M.Revathi,  
Senior Standing Counsel  
for Mr.Manivannan  
For Respondent : Mr.G.Natarajan



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## **JUDGMENT**

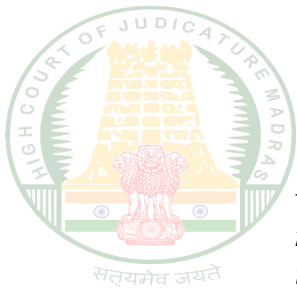
(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Writ Appeal is directed against the order passed on 27.07.2020 in W.P.No.477 of 2020.

2. By the impugned order, the said writ petition filed by the first respondent was allowed by the Writ Court. Operative portion of the impugned order reads as under:-

*“7. The revenue has filed a counter dated 06.03.2020. One ground taken in counter is that the order of R2, i.e., Commissioner of Service Tax (Appeals II) dated 01.02.2020 accepting the contention of the petitioner that there is duplication to the extent of Rs.19,15,491/- was in violation of the principles of natural justice, taken without hearing R1. At the outset, there is no provision under Chapter V of the Finance Act 1994 requiring the Appellate Commissioner to hear the Revenue while deciding a first appeal. Section 85(5) of the Finance Act, that stipulates the procedure to be followed by R2 in appeal, does not require him to extend an opportunity of hearing to the revenue. The provision moreover refers one to the provisions of Section 35 of the Central Excise Act 1944 (CE Act) that governs all matters in regard to a first appeal under service tax law as it would those appeals under central excise law. Section 35(1) specifically states that ‘the appellant’ shall be heard in deciding the appeal. By comparison, in hearing an appeal by the Tribunal, Section 36 of the CE Act states that the Tribunal shall hear ‘the parties to an appeal’ in deciding an appeal.*

*8. Secondly, the direction to R2 to dispose the petitioners’ appeal*



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was issued in the presence of the panel counsel for R1 and paragraph 7 of my order is specific to the effect that the petitioner shall be heard. If at all the Revenue was of the view that they should also be heard, the panel counsel could well have sought inclusion of the same since the orders were dictated in his presence in open Court. Not having done so, the plea of violation of principles of natural justice cannot be taken now. This ground is misconceived and stands rejected.

9. On merits, clearly, there is an overlap between the period covered under SCN1 and SCN2, the former covering the period December 2008 to January 2010 and the latter the period April 2008 to March 2010. The periods December 2008 to January 2010 are thus common under both SCNs.

10. The revenue agrees in counter that the demand of Rs.19,15,941/- is duplicated. Hence, according to them, the demand under OinO2 stands reduced to Rs.10,00,775/- of which 30%, as per the Scheme, is a sum of Rs.3,00,232.50. Then they say that the amount duplicated needs to be reduced from the original demand and cannot be used as pre-deposit for the present demand as it has already been used towards pre-deposit for the appeal challenging O in O 1. This argument is unacceptable. R2 has, after examination of the two SCNs, Orders in Original and the demands raised thereunder held that the appeal is maintainable and this cannot be called into question again in counter. In fact, the counter, filed after the order passed by R2, runs contrary to the officers' findings and conclusion.

11. The revenue relies on the provisions of Section 130(1) of the Scheme that reads as under: 130.

(1) Restriction under the Scheme: Any amount paid under this Scheme,—

(a) shall not be paid through the input tax credit account under the indirect tax enactment or any other Act;

(b) shall not be refundable under any circumstances;

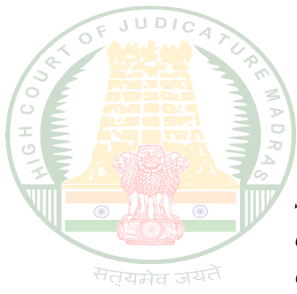
(c) shall not, under the indirect tax enactment or under any other Act,—

(i) be taken as input tax credit; or

ii) entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

(2) In case any pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded

12. According to the revenue, there is an excess of a sum of Rs.15,18,561/- in regard to O in O 1 that, by application of Section 130(2)



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*shall neither be refunded nor utilised towards any other demand. This argument is also misconceived. The petitioner, as confirmed by the order of R2, is right about the double demands raised for Periods 1 and 2. Thus, as far as the demand of Rs.19,18,375/- is concerned, it ought not to have been raised at all. The remaining demand of Rs.9,98,350/- corresponding to Period 2 also stands covered/telescoped by the amount of Rs.80,74,333/- already paid for the same period earlier. In stating this, I have taken note of the position that the total taxable value of the two projects under both SCN 1 and 2 is identical. (See the Annexures to the SCNs).*

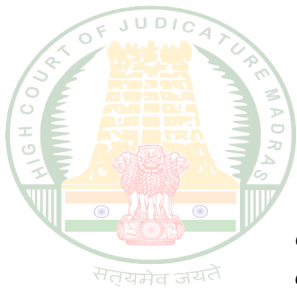
*13. The conflicting computations of the petitioner and respondents are as extracted below:-*

*Petitioner's declaration under Scheme*

Tax Dues	Rs.29,16,716.00
Tax Relief	Rs.20,41,701.00(70 %)
Tax dues less tax relief	Rs.8,75,015.00 (30%)
Pre-deposit/Other deposit	Rs.19,15,491.00
Tax dues under SVLDRS	Rs. 0

*Revenue's Computation under impugned order:-*

S.No.	Category	Issue Involved	Time Period				Tax Dues	Tax Relief	Pre-Deposit/ any other Deposit of	Estimated Amount Payable
			From Period	To Period	Name	Amount				
1	Litigation	1	14.10.16	14.10.16	Works Contract Service - 00440410	29,61,716.00	20,41,701.20		Works Contract Service – 00440410	8,75,014.80
					Grand Total	29,61,716.00	20,41,701.20			8,75,014.80



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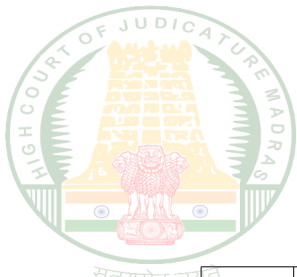
14. *The point of dispute revolves around the remittance or otherwise of the amount of Rs.19,15,491/-. In the light of the detailed discussions in the paragraphs above, there being no dispute on the position that the petitioner has, admittedly, remitted the aforesaid amount and the demand under SCN2/OinO2 is a dual demand, the computation of the petitioner is accepted and the impugned order set aside.*

15. *The Dispute Resolution Scheme is an attempt to close legacy tax disputes and a certain amount of fairness should be seen in the interpretation of the provisions of the Scheme. Learned counsel for the respondent would harp on the argument that a dispute raised under one SCN cannot be settled by utilising a deposit made under a different SCN. This argument does not arise in a case such as the present, since the two SCNs relate to identical transactions, time periods and demands and constitute a duplication of proceedings.*

16. *This writ petition is allowed. No costs. Connected Miscellaneous Petitions are closed.”*

3. In the writ petition, the respondent herein had prayed for quashing Form-SVLDRS-3 No.L06129SV3000082 dated 06.12.2019 issued to the respondent and directed the appellant herein to issue discharge certificate under Form SVLDRS-4 without insistence of any further payment.

4. The peculiar case of the respondent is that the respondent had received the following two Show Cause Notices mentioned for the overlapping periods which has culminated in the following Orders-in-Original :-

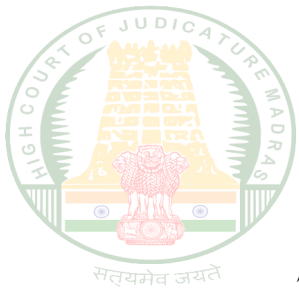


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Sl.No.	1 <sup>st</sup> Show Cause Notice				2 <sup>nd</sup> Show Cause Notice			
	Dated	Period	Order in Original		Dated	Period	Order in Original	
			Reference	Dated			Reference	Dated
1	12.10.2011	December 2008 to January 2010	5/2013	30.01.2013	09.02.2012	April 2008 to March 2010	48/2016-17-ST-II	14.10.2016
Amount		Rs.1,69,52,423/-			Amount		Rs.29,16,760/-	

5. It appears that as far as the amount demanded in the first mentioned Show Cause Notice dated 12.10.2011 and confirmed vide Order-in-Original No.5/2013 dated 30.01.2013, the respondent had preferred an appeal before the Central Excise and Service Tax Appellate Tribunal [CESTAT for short] and pre-deposited a sum of Rs.99,94,773/- under Section 35F of the Central Excise Act, 1944 as made applicable to appeals under Finance Act, 1994.

6. As far as the amount demanded in the second mentioned Show Cause Notice dated 09.02.2012 and confirmed vide Order-in-Original No.48/2016-17 dated 14.01.2016 is concerned, the respondent had preferred an appeal before the Commissioner of Service Tax (Appeals).



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7. According to the petitioner, the demand confirmed in Order-in-Original No.48/2016-17 dated 14.01.2016 was a duplication of a part of the demand already confirmed in Order-in-Original No.5/2013 dated 30.01.2013. Therefore, the petitioner did not effect the statutory pre-deposit,

8. By virtue of Communication dated 21.12.2016 bearing reference No.C.IV/2/10/2016 (STA-II) issued by the Office of the Superintendent of Central Excise Service Tax (Appeals-II), the respondent's appeal against the Order-in-Original No.48 of 2016-2017-II dated 14.10.2016, was returned on the ground that the respondent had failed to make mandatory pre-deposit under Section 35-F of the Central Excise Act, 1944 as made applicable to the appeal against the order passed by the authority under Finance Act, 1994.

9. The respondent therefore filed W.P.No.3167/2017 challenging the said Communication dated 21.12.2016 bearing reference No.C.IV/2/10/2016 (STA-II). Vide order dated 09.02.2017 in



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W.P.No.3167/2017, the said Communication dated 21.12.2016 bearing reference No.C.IV/2/10/2016 (STA-II) was quashed and the Commissioner of Service Tax(Appeals) was directed to consider the claim of the petitioner regarding duplication of demands set out under a representation dated 16.12.2016 and pass orders within a period of two weeks from date of receipt of the Courts' order.

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10. The appeal was thereafter resubmitted by the respondent on 27.02.2017 vide Appeal No. IV/2/10/2016(STA-II).

11. It is during this period, the Sabkha Vishwas Legacy Disputes Resolution Scheme, 2019 came to be announced vide the Finance Act No.2 with effect from 21.08.2019. The respondent wanted to settle the dispute under Sabkha Vishwas Legacy Disputes Resolution Scheme, 2019 as against the demand confirmed vide Order in Original No.5 of 2013 dated 30.01.2013 and Order in Original No.48 of 2016-2017-II dated 14.10.2016. It is in this background, the respondent had filed an application to settle the dispute under the Sabkha Vishwas Legacy Disputes Resolution Scheme, 2019.





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12. Under the scheme, the respondent was entitled to 50% abatement and thus, as against the tax demand of **Rs.1,69,07,927/-** confirmed vide Order in Original No.5/2013 dated 30.01.2013, for the period between December 2008 – January 2010. Thus, the respondent was required to deposit only **Rs.84,76,212/-** being 50% of the tax liability.

13. As far as the demand confirmed vide Order-in-Original No.48/2016 17-ST-II dated 14.01.2016 is concerned, the respondent had declared for settling the dispute under the Sabkha Vishwas Legacy Disputes Resolution Scheme, 2019 under the “litigation category” vide Form SVLDRS-1 dated 01.11.2019.

14. Form No.SVLDRS-1 filed by the respondent on 01.11.2019 under Section 125 of the Finance Act, 2019 was processed on 14.11.2019 whereby the amounts mentioned in Form-3 was to be paid by the respondent.



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15. In Form-1, the appellant had referred to Order in Original No.48/2016-2017 – ST-II dated 14.10.2016 and stated that there has been duplication of demand and thereby declaring a pre-deposit of **Rs.19,15,491/-** in Form-1. The dispute in the above mentioned Order in Original No.48/2016-17 dated 14.10.2016 relates to the period between **2008-09 & 2009-10**

16. The declaration was also processed in Form SVLDRS-3 dated 06.12.2019 whereby as against the tax due of **Rs.29,16,716.20**, confirmed vide Order-in-Original No.48/2016 17-ST-II dated 14.01.2016 ,the respondent was granted partial relief and thereby, the respondent was called upon to pay a sum of **Rs.8,75,015/-** (being 30% of **Rs.29,16,716/-**), for settling the dispute under the aforesaid Scheme.

17. However, it is the claim of the respondent that it had already paid an amount of **Rs.19,15,491/-** prior to the filing of Form SVLDRS-1 and therefore, the case of the petitioner was to be settled without any additional payment, if the aforesaid amount of **Rs.19,15,491/-** was adjusted towards the amount payable under the scheme.



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18. As the amount that was remitted by the appellant originally towards pre-deposit for the demand confirmed vide Order-in-Original No.5/2013 dated 30.01.2003 in the first mentioned Show Cause Notice No.443/2011 dated 12.10.2011 was in excess, it is the case of the respondent that such pre-deposit ought to have been treated as pre-deposit for the purpose of appeal against the second mentioned Order- in-Original No.48 of 2016-2017-II dated 14.10.2016, confirming the demand proposed in Show Cause Notice No.9/14/2012-STC/ADJ.

19. Since the appellant directed the respondent to pay **Rs.8,75,015/-**, Form SVLDRS-3 dated 06.12.2019 was subject matter of a challenge in W.P.No.477 of 2020 by the respondent, pursuant to which, the order impugned in the writ petition was passed which is the subject matter of challenge in this appeal.

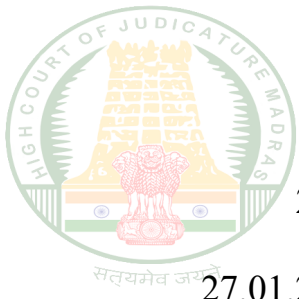
20. When the matter came up for admission before the Writ Court in W.P.No.477 of 2020, vide order dated 09.01.2020, the Court *suo motu*



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impleaded the Commissioner of Service Tax (Appeals-II) as R2 and reiterated the direction to him to consider and dispose the representation dated 16.12.2016 of the respondent herein as already ordered by this Court on 09.02.2017 in W.P.No.3167 of 2017. The respondent had, in the representation aforesaid, specifically averred that a dual demand of service tax had been raised for the period December 2008 to January 2010 under two separate Show Cause Notices

21. In compliance with the order dated 09.01.2020 in W.P.No.477 of 2020, the Commissioner of Service Tax(Appeal) No. 001/2020 (CTA-II) vide order dated 27.01.2020, confirmed the demand but held that there was duplication to an extent of Rs.19,18,375/- for the period between December 2008 to March 2009 which was appropriated by Original-in-Original No.5/2013 dated 30.01.2013 and it was was 'way' above the mandatory pre-deposit of 7.5% of the total demand of Rs.29.16,716/- raised and confirmed as was required under Section 35F of the Central Excise Act, 1944 and same has to be considered as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 and therefore, admitted the appeal.



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22. The order of the Commissioner of Service Tax (Appeals) dated 27.01.2020 also records the fact that the respondent had also filed declaration under SVLDRS Scheme 2019, in respect of the subject matter of the appeal and has approached this Court in W.P.No.477 of 2020 which has stayed operation of impugned order in Form SVLDRS-III dated 06.12.2019.

23. Operative portion of the order in A.No.001/2020 (CTA-II) dated 27.01.2020 reads as under:-

*12. (i) Therefore, I am of the considered opinion that the amount paid by the appellant to the extent of Rs. 19,18,375/-, for the period December 2008 to March 2009, which is appropriated by Order-in-Original No. 5/2013 dated 30-1-2013, is way above the mandatory 7.5% of the total demand of Rs. 29,16,716/-, raised and confirmed, as required under Section 35F of Central Excise Act, 1944. Hence, the same is to be considered as a pre deposit in terms of Section 35F of the Central Excise Act, 1944, and accordingly the appeal is admitted.*

*(ii) The appellant has apparently filed Declaration under SVLDRS, 2019 in respect of the present appeal, against OIO No. 48/2016-17 in SCN 20/2012 and has approached the Hon'ble High Court by filing a Writ Petition vide WP No. 477 of 2020, which has stayed operation of the Order in Form SVLDRS-III dated 6.12.2019 rejecting their declaration under the Scheme. Under the circumstances, the appeal against the Order-in-Original No. 48/16-17 ST-II dated 14.10.2016 is premature and therefore to be decided at later stage."*

24. Thus, it stands confirmed that a sum of **Rs.19,15,491/-** was paid in excess of amount demanded from the respondent vide Order in Original



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No.48/2016 -2017-ST-II dated 14.10.2016, in respect of the second

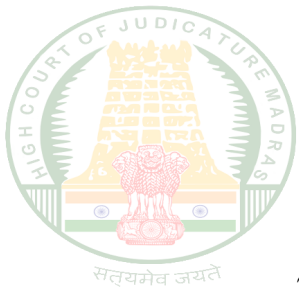
mentioned show cause notice covering the period between April 2008 and

March 2010.

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25. The amount that was paid prior to passing of the Order-in-Original No.48/2016 for a sum of **Rs.99,94,773/-** was eligible for being set off against the tax liability of the respondent under the Scheme for the period under dispute covered by the 2<sup>nd</sup> demand in Show Cause Notice as confirmed by the Order in Original No.48/2016 dated 14.10.2016 as there was an excess amount of **Rs.15,18,561/-** (Rs.99,94,773/- 84,76,212/-) paid by the petitioner against demand comprised in Order-in-Original No.48/2016 dated 14.10.2016.

26. As per Section 124(2) of the Sabkha Vishwas Legacy Disputes Resolution Scheme, 2019, any amount paid under pre-deposit at any stage of Appellate proceedings under the Indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant.



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27. Proviso to Section 124(1) of the Sabkha Vishwas Legacy

Disputes Resolution Scheme, 2019 reads as under :-

*(1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows :*

*(a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—*

- (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;*
- (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;*

*(b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;*

*(c) where the tax dues are relatable to an amount in arrears and,*

*(i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. of the tax dues;*

*(ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;*

*(iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—*

*(A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;*

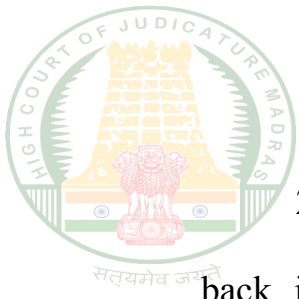
*(B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues;*

*(d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—*

*(i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;*

*(ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;*

*(e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.”*



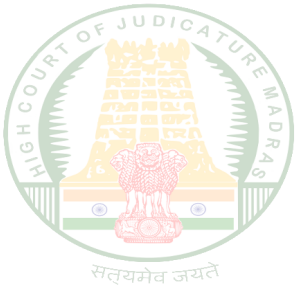
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28. Though, the aforesaid sum of **Rs.15,18,561/-** cannot be refunded back, it can be adjusted towards the amount payable under the scheme for the demand confirmed vide Order-in-Original No.48/2016 dated 14.10.2016 for the period mentioned in the second mentioned show cause notice which is the subject matter of the present dispute.

29. The balance amount of **Rs.15,80,561/-** (Rs.99,94,773 – Rs.84,76,212) is to be allowed for adjustment towards the amount determined in SVLDRS – III dated 06.12.2019.

30. Thus, the amount of **Rs.15,80,561/-** (Rs.99,94,773 - Rs.84,76,212) has to be adjusted towards liability of the respondent under SVLDRS Scheme 2019. Thus, out of the aforesaid amount of **Rs.15,80,561/-** (Rs.99,94,773 – Rs.84,76,212/-), a sum of **Rs.8,75,075/-** ought to have been adjusted. The balance of **Rs.7,05,546/-** [**Rs.15,80,561/-** (-) **Rs.8,75,015/-**] is however, not refundable back to the respondent in terms of proviso to Section 124(2) of the Act. Therefore, we are not inclined to interfere with the impugned order of the learned Single Judge of this Court.





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31. Accordingly, this writ appeal stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(C.S.N., J.)

18.09.2024

Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No  
kkd/mrr

To

- 1.The Joint Commissioner of GST and Central Excise &  
Assistant Commissioner of GST and Central Excise,  
Chennai South Commissionerate,  
MHU Buildings, No.692, Anna Salai,  
Nandanam, Chennai 600 035.
2. The Commissioner of Service Tax (Appeal-II)  
Newry Towers 2054, I Block,  
2<sup>nd</sup> Avenue, 12<sup>th</sup> Main Road,  
Anna Nagar West, Chennai 600 040.



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**R.SURESH KUMAR, J.**  
**and**  
**C.SARAVANAN, J.**

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