

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.9701 OF 2014

DATED:28.3.2014

Between:

M/s. Sarigama Restaurant and Bar
Premises at House No.26-14-13/3, Survey No.169/1
National Highway No.5
Gajuwaka
Visakhapatnam-26
Rep. by its Proprietrix
Smt. Nunna Sri Padmavathi Ramana Kumari ... Petitioner

And

The Commissioner of Customs
Central Excise and Service Tax
Commissionerate
Central Excise Building
Port Area
Visakhapatnam
and another ... Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.9701 OF 2014

ORDER: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

The writ petition is admitted for hearing today and has been heard finally.

Learned counsel for the Revenue does not want to file counter in this matter.

It is an admitted position that the Hon'ble High Court of Kerala in the case of *South Malabar Trading Company, Vadakkancherry v. Union of India & others* [in W.P.(C) No.15867 of 2011(G), dt.3.7.2013] has struck down relevant provisions of the Finance Act, 1994 as amended by Finance Act, 2011 relating to levy of service tax. We fail to understand that in spite of the Kerala High Court judgment, which has not been upset as yet, as no one has informed that the decision has been stayed or upset, respondent No.2 has issued the show cause notice dt.20.9.2013. It is absolutely contrary to the aforesaid Kerala High Court judgment.

So, the Officer concerned, we believe, should have been careful. We do not understand why he has ignored the aforesaid judgment. In future he must not do so.

We, therefore, set aside the impugned show cause notice and allow the writ petition. There will be no order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand closed.

K.J. SENGUPTA, CJ

SANJAY KUMAR,

J

28.3.2014

bnr