

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2023

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.6801 and 6805 of 2023
and WMP Nos.6894 and 6899 of 2023

SKS Builders and Promoters
represented by its Managing Partner
K.Sekar

... Petitioner in both W.Ps

Vs.

Assistant Commissioner (ST),
Hasthampatty Circle,
Pitchards Road, Salem – 636 001.

.... Respondent in both W.Ps

Common Prayer: Petitions filed under Article 226 of the Constitution of India praying for issuance of Writs of Certiorari calling for impugned proceedings of the respondent passed in GSTIN:33ABZFS664D1ZL/2020-21 and 2021-22, both dated 13.01.2023 and quash the same, as the impugned proceedings of the respondent is without jurisdiction since, the respondent imposed a condition by mis-reading the sub-entry ix of Entry No.3 of the notification no.11/2017-C.T (Rate) dated 28.06.2017 as amended vide notification No.1/2018 C.T. (Rate), dated 25.01.2018.

(In both W.P.s)

For Petitioner : Mr.N.Murali
For Respondent : Mr. Haja Nazirudeen
Additional Advocate General
Assisted by
Mr.M.Venkateswaran
Special Government Pleader

COMMON ORDER

Mr.Haja Nazirudeen, learned Additional Advocate General, appearing for Mr.M.Venkateswaran, learned Special Government Pleader accepts notice for the respondent and is armed with instructions to proceed with the matter even at this juncture. Hence, by consent of both sides, these Writ Petitions are disposed finally even at the stage of admission.

2. The petitioner is a company engaged in the activity of civil construction and is registered under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act'). The petitioner participates in Government tenders and is also a sub-contractor engaged in activity sub-contracted by the main contractors as a consequence of contracts entered into by the former with the Government.

3. In such circumstances, the petitioner was awarded a sub-contract for construction of a new division office building in T.S.No.2 & 4, SF 107/1, part of Block No.22, Ward No. AH of K.Santhanoor Village in KK Nagar neighbourhood scheme, Trichy East Taluk, Trichy for the Tamil Nadu Housing Board.

4. This was pursuant to an agreement that the petitioner states, was entered into by the main contractor with the Board on 28.08.2020. According to the petitioner, his assignment was as a back-to-back contract vide agreement dated 25.11.2020. The value of the main contract between The contractor and the Housing Board was for a sum of Rs.8,20,04,631/-,

5. The main claim of the petitioner is avowed entitlement to the benefit of Notification No. 11 of 2017 dated 28.06.2017, which, in terms of clause (ix) thereof, grants the benefit of concessional rate of composite supply of works contract, as defined under clause 119 of Section 2 of the Central Goods and Services Tax Act, 2017, to a sub-contractor to the main contractor who provides services as specified in item (iii) or (vi) to the Central or State Governments, Union Territory, Local Authority, Government authority or Government entity.

6. The nature of the works carried on, according to the petitioner, is as per vi (a) of the Notification, reading as follows:

(vi) Services provided to the Central Government, State Government, Union territory, a local authority or a Government authority by way of construction, erection, commissioning, installation, completion, fitting out repair, maintenance, renovation or alteration of

(a) A civil Structure or any other original works meant predominantly for use other for commerce, industry or any other business or profession.'

7. This is a question of fact and the admitted case of the petitioner is that these documents have, admittedly, not been placed for appreciation of the Assessing Officer. This is a flaw insofar as the Assessing Authority could clearly not have been expected to appreciate the nature of the contract sans a copy of the agreement inter se the parties. This is on the one side and

the State would wholly rely upon this position.

8. However, the flip side of the matter is that the petitioner has, Admittedly, not been heard prior to passing of the impugned order. A notice was issued initially which was superseded by a revised notice in Form GST DRC-01 dated 24.11.2022. This notice states categorically the fact of supersession of the notice earlier issued. In conclusion, the officer grants an opportunity of filing a representation with all documentary evidences within 30 days of receipt of notice simultaneously granting opportunity of hearing as well.

9. The personal hearing has, admittedly, not been fixed by date or time and this is a gross flaw in this order, which this Court is tired of pointing out. The petitioner has also in compliance with the notice, filed a submission on 29.11.2022, though without any supporting documents.

10. Inter alia, the petitioner asks for a hearing in person prior to the issue being decided. The officer has brushed aside the request for personal hearing, proceeding instead to straight away pass the impugned order without hearing the petitioner.

11. That apart, the provisions of Section 75(4) which deal with the general procedure to be followed in determination of tax, specifically mandate that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable to tax or

penalty or where Shall be granted in all matters prior to finalisation of assessment except Any adverse decision is contemplated as against such person.

12. The sum and substance of Section 75(4) is that a personal hearing where the stand of the assessee is intended to be accepted by the Department. Thus, on this score, the officer has grossly erred in proceeding to finalise the impugned assessment in violation of the principles of natural justice.

13. In light of the observation as above, the impugned orders are set aside and these Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

06.03.2023

Index:Yes/No
Speaking order
Neutral Citation : Yes
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To

Assistant Commissioner (ST),
Hasthampatty Circle,
Pitchards Road, Salem – 636 001.

Dr.ANITA SUMANTH,J.

Sl

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