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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

T.C.R.(MD)Nos.1 and 2 of 2019
and
C.M.P.(MD)Nos.6435 and 6438 of 2013

M/s.Royal Infraconstru Ltd.
(Formerly M/s.Royal Foreign Pvt. Limited)
A Company incorporated under the provisions of
the Companies Act, 1956,
having its Registered Office situated at Godrej Waterside Building,
Dp Block, Sector-Vm Saltlake Kolkata-700 091,
Through its Authorised Signatory
Mr.Biswa Ranjan Sarangi
S/o.Late Bipad Bhanjan Sarangi,
547, JawPur Road,
Ramkrishna Park,
Kolkata-700 074.

...Petitioner in both cases

/Vs./

The State of Tamil Nadu
Through the Joint Commissioner (CT),
Madurai Division,
Madurai.

...Respondent in both cases



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COMMON PRAYER:- Tax Case Revision- filed under Section 38 of the Tamil Nadu General Sales Act, 1959, to call for the records of the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench Madurai in Madurai Tribunal Appeal Nos.32 and 33 of 2018 dated 19.11.2018 and quash the same as illegal and contrary to the provisions of law.

In both cases:

For Petitioner : Mr.Amar Nath Sen
For Respondent : Mr.T.Amjadkhan
Government Advocate

COMMON ORDER

(Order of the Court was made by **DR.ANITA SUMANTH, J.**)

These tax case revisions have been filed challenging order dated 19.11.2018 passed by the Sales Tax Appellate Tribunal, Madurai (in short 'Tribunal') in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'), for the periods 2002-03 and 2003-04 (in short 'periods in question').



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2. The Petitioner is engaged in the business of manufacturing and fabrication of railway tracks, and is a railway contractor undertaking works for the Railways in India. It is hereinafter referred to as 'petitioner'/'assessee'/'contractor'. The petitioner is not registered to sales tax in the State of Tamil Nadu.

3. Assessments were made on 02.05.2013 and concurrent orders suffered by the petitioner through both levels of appellate hierarchy, order of the Appellate Commission in first appeal dated 30.08.2017 and order of the Tribunal dated 19.11.2018. The facts, as relevant to decide these appeals, are as set out in the paragraphs to follow.

4. The petitioner had responded to a call for tender in regard to the '*Replacement of bridge timbers with steel channel sleeper in girder bridges in various sections of the tracks in the Southern Railways*'. Letters of acceptance were issued by the Southern Railways accepting the tenders submitted by the petitioner on 19.03.2002 and 30.04.2002.

5. Pursuant to the Letter of Acceptance, Agreement for works were executed between the parties on 08.10.2002 and 11.11.2002. The agreements are as between the assessee situated at Raipur and the



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Southern Railways. The General Notes for Schedule make it clear, in clauses 4 and 5 thereof, that the materials towards fabrication should be provided by the contractor and that there should a pre-contract inspection of the site by the contractor.

6. The scope of the work accepted by the petitioner is comprehensive, relating to manufacturing/fabrication of the sleepers and fitment on to the tracks in Tamil Nadu. The contract provides for deduction of tax source at 2% from the running bills. Though much has been made in this regard by learned Government Advocate, who states that this stipulation in the documentation would itself justify the assessments, we do not accept this contention.

7. A stipulation in regard to the deduction or payment of tax in the contract would not tantamount to an assessment, which has to be in line with the statutory provisions only. It is always open for the concerned assessee to seek refund as has been done in the present case.

8. Importantly, the payment schedule as per the special conditions of steel channel sleeper is as follows:

“Special Condition of Steel Channel Sleeper:

.....4.Payment schedule, galvanized channel sleepers and its complete fittings and fixtures (for item 1 of tender



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schedule)

(a) On arrival of all galvanized channel sleepers with all including fittings for item I and II at bridge work site 60% (duly passed by inspecting officials and supported by relevant tcst/inspection certificates).

(b) Fixing of all channel sleepers on the girder after dismantling the existing bridge timbers and painting the sleeper by one coat of the red lead pain conforming to IS 102 which will be supplied by the contractor and completion of linking of running and guard rails over the ontire channel sleeper with all fittings and fixtures in correct gauge level and alignment as per IRPWM(20%)

(c) Transportation and stacking of the released materials (small fittings, bridge timbers) to the nearest stores depot, SE/Pway(20%).

9. The Agreement also provided that upon receipt of the fabricated materials by the designated authority in the Southern Railways, there shall be a technical team available on-site, deputed by the assessee at Raipur for fitment of the same on the tracks.

10. The team was to comprise of one Graduate Engineer, one qualified Diploma Holder (Overseer) and technical staff, who would be responsible for the execution of the contract in Tamil Nadu. The members of the team would be deputed by the contractor and their payment would be fixed and met by the engineer-in-charge of the



Southern Railways. The fabrication work was duly undertaken by the assessee at Raipur and it is an admitted fact that the materials were received by the designated authority in the Southern Railways.

11. Perusal of schedule 'C', leaves us in no doubt that what has been received by the Southern Railways are the tracks fully fabricated and ready for installation. The scope of work undertaken locally, pertained only to the fitment of tracks using the fittings available at various locations covered by the agreement.

12. The questions of law referred for decision relate to whether the transaction between the petitioner and the Southern Railways constitute domestic or interstate sales, and read thus:

A. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the transaction only an Intra-State Transaction and not Inter-State transaction?

B. Whether, on the facts and the circumstances of the case, the Tribunal was right in having concluded that in all aspect the Appellant/Petitioner fails to establish their case and has no hesitation to confirm the Order passed by the first Appellate authority although the appellant produced all documents before the authorities below and the Authorities did not consider submission of the petitioner.

C. Whether, on the facts and in the circumstances of the case, the entire turn over relating to the works contract is at all taxable under the TNGST Act. 1959?



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D. Whether, on the facts and the circumstances of the case, the Tribunal failed to consider that the goods have moved from Raipur State of Chhattisgarh to Madurai in the state of Tamil Nadu and the petitioner duly collected Form-D from Southern Railway so the transaction as Inter- State Trade/Works contract U/S/ 3(a) of the central sales tax Act 1956?

13. We may, at this juncture, note that the correspondences entered into between the parties and the orders passed contain three addresses of the petitioner, being, (i) Royal Forgings Pvt Ltd., URLA Industrial Growth Centre, Sector 'C' Plot No.209, Raipur-493 221 (ii) Tvl.Royal Forgings (P) Ltd., Railway-Works Contractor, Southern Railway Yard, Madurai (ii)The Royal Forgings (P)Ltd., 180, Lakshmi Mills Colony, P.N.Palayam, Coimbatore-17.

14. It is an admitted position that the petitioner is based at Raipur, at the address as (i) above, and has undertaken the fabrication work there only. The second address, at point (ii) above, the railway yard, is one assumed by the respondents, where the onsite team of the petitioner has undertaken the task of readying the sleepers for fitment onto the tracks. The address at serial (iii) is, as confirmed by learned Government Advocate, the address of the sales tax consultant at Coimbatore.



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15. Upon completion of the contract, the petitioner has, through consultant, sought refund of the sales tax deducted at source upon payments remitted to it by the Railways. It was only then, when the sales tax department was required to refund the amount, that show cause notices came to be issued to the petitioner proposing to treat the transactions as domestic 'works contracts'.

16. The department issued pre-assessment notices on 15.02.2010, adopting the stand that the activity of manufacturing/fabrication and execution of the work had taken place in Tamil Nadu and would be treated as domestic sales. Incidentally, the pre-assessment notices have been issued beyond the statutory period of limitation. However, as no defence has been taken by the assessee on this score, we leave this issue as is and proceed to decide the matter on merits.

17. The show cause notices concede to the position that the fabricated material has been sent by the assessee from Raipur to Madurai and bridge inspector of railways has received the same. The fitment of the sleepers has been executed with the assistance of labour appointed by



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the Contractor. Neither the pre assessment notices nor the orders of assessment or appeal take into account the specific terms of the documents inter se the assessee and Southern Railways though the documents are available on record. We have called for the records to ascertain this position and the same have been produced before the Court.

18. The proposal is to tax the transaction as works contract in terms of Section 7(F) of the Act. Section 7(F) is not a standalone provision but has to be read and applied in tandem with Section 3 of the Act, which is the charging provision. Section 2(n) defines 'sale' and states that *every transfer of property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration would constitute sale.*

19. Explanation-3 to Section 2(n) contemplates a situation where a sale under a contract of sale or purchase will be deemed to have taken place in the State, and reads as follows:

“Explanation (3).-(a)The sale or purchase of goods shall be deemed for the purposes of this Act, to have taken place in the State, wherever the contract of sale or purchase might



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have been made, if the goods are within the State-

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

20. In the present case, the contract is between the assessee in Raipur and Southern Railways. We are unaware of where the contract was entered into by the parties. However, there is no dispute on the position that the goods forming the subject matter of the contract, have been fabricated in Raipur and thereafter brought to Tamil Nadu for installation.

21. Explanation-3 to Section 2(n) of the Act would not stand attracted in such a case and the transaction would fall outside the ambit of domestic sale, assuming the character of interstate sale only. In fact, these very transactions have been the subject matter of assessments under the Central Sales Tax Act 1956 (in short 'CST') and CST assessment orders for the periods 2002-03 and 2003-04 have been placed on record by the petitioner at page Nos.263 and 269 of compilation dated 17.07.2023.

22. For the reasons as assigned above, the petitioner is entitled to succeed. The impugned orders of the Tribunal are set aside and



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questions of law are answered in favour of the petitioner to the effect that the transactions in question constitute interstate sales, not liable to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

23. The tax deducted at source shall be paid over to the petitioner within a period of twelve weeks from date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

[A.S.M.J.] & [R.V.J.]
17.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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To
The Joint Commissioner (CT),
Madurai Division,
Madurai.

Order made in
T.C.R.(MD)Nos.1 and 2 of 2019

Dated:
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