IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.3364 of 2011
MP.No.1 of 2011

M/s.RDS Project Limited,
Chennai-28 ... Petitioner

Vs

The Assistant Commissioner (C.T)
Ice House Assessment Circle,
Chennai ... Respondent

Prayer:- This Writ Petition is filed to issue a Writ of Certiorari to call for the records of the Respondent in his proceedings in TNGST 0742116/2005-06, dated 11.1.2011 and to quash the same.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.S.Kanmani Annamalai, Additional Government Pleader

ORDER

In this Writ Petition, the Petitioner seeks to quash the impugned order, dated 11.1.2011, confirming the proposal of revision of assessment.

2. The facts, in a nutshell, leading to the filing of this Writ Petition, are that the Petitioner is a Works Contractor and registered under the Tamil Nadu General Sales Tax Act, 1959. The Petitioner undertook sea protection works along Ennore Expressway as a part of Chennai Ennore Port Connectivity Project. The Petitioner entered into an agreement on 20.5.2003 with Chennai Ennore Road Company Limited for the said work. The scope of the agreement are identification of quarries for supply of stones, arranging for transportation of the same and construction of groynes i.e. sea wall. The said work commenced on 15.6.2003 and completed on 30.6.2006 i.e. between the assessment years 2003-04, 2004-

05, 2005-06 and 2006-07, for which, the Petitioner paid resale tax at 1% on 70% of the works contract receipts and claimed deduction on 30% towards labour and other charges as per Section 3B(2e) of the Act. The returns filed by the Petitioner were accepted and original assessments were completed for the assessment years 2003-04, 2004-05 and 2005-06. While so, the Respondent issued a notice dated 21.8.2008, proposing to revise the assessment for the assessment year 2005-06 alone, alleging that the Petitioner had only effected supplies to the National Highways Authority of India (in short NHAI) and not executed any works contract, to which, the Petitioner filed a detailed objection. Thereafter, the Respondent issued another notice dated 21.10.2009, alleging that the transaction with NHAI is for sale of boulders and hence, it is not a works contract, to which also, the Petitioner sent a detailed objection. However, the Respondent issued another revision notice dated 2.6.2010, followed by a revised order dated 1.7.2010, levying tax at 4% on the entire works contract receipts. As against the same, the Petitioner filed WP.18126 of 2010, which was disposed of, by setting aside the assessment order and directing the Respondent to pass fresh orders. Thereafter, the Respondent issued a notice dated 26.10.2010 and the Petitioner filed a representation and appeared for personal hearing. Thereafter, the Respondent by the impugned order dated 11.01.2011, confirmed the earlier assessment, holding that there was supply of boulders and hence, it was not a works contract. Hence, the Petitioner is before this Court.

3. Heard both sides.

4. The learned counsel for the Petitioner contended that having accepted the transaction as a works contract for the assessment years 2003-04 and 2004-05, it is not open to the Respondent to treat the same transaction as an outright sale for the assessment year 2005-2006 and that after introduction of the 46th Amendment to the Constitution of India, States were empowered to bifurcate the works contract and to levy sales tax only on the value of material involved in the execution of the works contract and not on the entire works contract receipts and that prior to introduction of the 46th Amendment to the Constitution of India, the State could not levy sales tax on the sale of goods involved in the execution of works contract as the contract was indivisible i.e. involving both supply and labour and the State is empowered to levy sales tax, but only on the value of material involved in the execution of works contract and hence, prayed for quashing of the impugned order.

5. The learned Additional Government Pleader for the Respondent submitted that on scrutiny of the assessment records, it was noticed that the dealer had supplied boulders to NHAI and the contract was for supply of boulders and stones and hence, it is nothing but a supply contract and the receipts received in this regard is nothing but receipts for supply and that the statement of transactions clearly revealed that the sale was effected and hence, the contract was for sale of boulders and that considering the said aspects, in the absence of any agreement or contract produced by the Petitioner, it was held that the dealer had taken lease of quarry and supplied boulders from it and accordingly, the impugned order, confirming the assessment was passed, which warrants no interference by this court.

6. This court considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. As per the agreement dated 20.05.2003, the nature and scope of the works undertaken by the Petitioner are as follows:-

i. Identification of quarries for supply of stones of required specifications.
ii. Arranging for transportation of the stones from the quarries to the work site and
iii. Construction of groynes, i.e. sea wall according to specified designs, standards and specifications.

8. From the available records, it is seen that the boulders were purchased by the Petitioner locally upon payment of necessary taxes and also utilized in the execution of works contract. Therefore, the Petitioner, while reporting the total receipts related to works contract for the relevant assessment years, paid resale tax at 1% under the provisions of the Tamil Nadu General Sales Tax Act. Having accepted the returns filed by the Petitioner related to the assessment years 2003-04 and 2004-05, an entirely different stand for the subsequent assessment year 2005-06 has been taken by the Respondent. Further, the Petitioner filed appropriate reply/objections, pointing out that the contract executed by the Petitioner for NHAI is purely a works contract, involving both supplies and labour and the same cannot be treated as a sale, citing relevant authorities of the Honourable Supreme Court. Therefore, the Respondent, without any prima facie reason, cannot take a different stand, in so far as the assessment year 2005-06 is concerned.

9. In 2001-124-STC-59 (Associated Cement Companies Limited Vs. Commissioner of Customs), the Honourable Supreme Court has made it clear that the dominant factor was related to works contract as well as the labour and a small percentage was for supply of material and when such being the position, the entire transaction has to be treated only for labour and hence, no tax liability could be imposed. The same view has been reiterated in the decision of the Honourable Supreme Court reported in 145 STC 91 (BSNL Vs. Union of India).

10. Further, after introduction of the 46th amendment to the Constitution of India, the States were empowered to bifurcate the works contract and to levy sales tax only on the value of the materials involved in the execution of the works contract and not on the entire works contract receipts. Therefore, in view of the said amendment, the conclusion of the Respondent that the transaction between the Petitioner and NHAI is predominantly for sale of boulders and hence, only a 'sale' and not a 'works contract', is not sustainable.

11. For the above said reasons and in the light of the settled legal position laid down in the decisions of the Honourable Supreme Court cited supra, this court is of the considered view that the impugned order is contrary to facts and the settled legal position of law and accordingly, the impugned order is set aside. The matter is remanded back to the Respondent to redo the assessment in the light of the above cited decisions. Since the assessment is related to further more issues, such as, consumable charges, lubricant purchases, quarry expenses, hire charges and work site expenses, the Respondent is directed to independently look into each and every issue and thereafter, pass appropriate orders, after giving due opportunity to the Petitioner, on merits and in accordance with law. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Srcm

To:

The Assistant Commissioner (C.T)
Ice House Assessment Circle,
Chennai.

+1cc to Mr.P.V.Sudakar, Advocate, S.R.No.59453
+1cc to the Government Pleader, S.R.No.60356

W.P.No.3364 of 2011

AD(CO)
CA(22/12/2015)