IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.38700 of 2015
and M.P.No.1 of 2015

C.Gunasekar [Petitioner]
Managing Partner
M/s.Janani & Co.
No.38/49 Town Hall
3rd Street Arakkonam
Vellore District.

Vs

1 The Divisional Railway Manager
(Works Branch) Chennai Division
Southern Railway Park Town
Chennai 3

2 The Deputy Commercial Tax Officer
Arakkonam Assessment Circle
Arakkonam [Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus forbearing the 1st respondent from deducting value added tax at source in respect of work executed by the petitioner under contract agreement No.200/South/MAS dt 3.9.2015 until the 2nd respondent issued a certificate in Form S on the basis of the petitioners application dated 2.11.2015.

For Petitioner : Mr.G.Jeremiah
For Respondents : Mr.S.Kanmani Annamalai, AGP (R2)
Mr.A.P.Srinivas, Standing Counsel (R1)

O R D E R

Heard the learned counsel for the petitioner, Mr.A.P.Srinivas, learned Standing Counsel, who took notice for the 1st respondent and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who took notice for the 2nd respondent and with their consent, the main writ petition itself is taken up for disposal.

2. The petitioner has come forward with this writ petition

praying for the issue of a writ of mandamus forbearing the 1st respondent from deducting value added tax at source in respect of work executed by the petitioner under contract agreement No.200/South/MAS dated 3.9.2015 until the 2nd respondent issues a certificate in Form S on the basis of the petitioner's application dated 2.11.2015.

3. The case of the petitioner is that he is a registered contractor with the Southern Railway and also a registered dealer with the 2nd respondent, assigned with VAT Tax No.33894301649. It is the further case of the petitioner that pursuant to the contract awarded by agreement dated 03.09.2015, he commenced the work immediately and submitted a bill to the respondent. However, the 1st respondent is now attempting to deduct tax at source in terms of Section 6 of the Tamil Nadu value Added Tax Act, 2005 at the rate of 2% on the ground that the work being executed by him is a works contract. It is the further case of the petitioner that since the work being executed by him is labour oriented and no element of sale is involved and since the 1st respondent has no jurisdiction to deduct tax at source, he submitted an application in terms of Rule 9(2) of the Rules to the 2nd respondent in Form S on 02.11.2015. But, sofar, the 2nd respondent has not issued the certificate. Hence the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the 2nd respondent has failed to discharge his statutory functions. According to him, the 2nd respondent, being the statutory authority under the Act, is duty bound to issue the certificate in Form S to the petitioner. He would further submit that under Rule 9(2) of the Tamil Nadu Value Added Tax Rules, 2007, the 2nd respondent has to pass orders on the petitioner's application submitted in Form S. That apart, according to him, the 1st respondent has no authority to deduct tax at source when the petitioner's application is pending disposal before the 2nd respondent. Adding further, the learned counsel would submit that the petitioner's application dated 02.11.2015 may be directed to be disposed of by the 2nd respondent within a stipulated time.

5. The learned Additional Government Pleader appearing for the 2nd respondent would submit that the application filed by the petitioner will be disposed of within the time stipulated by this Court.

6. In view of the above, this writ petition is disposed of by directing the 2nd respondent to dispose of the application submitted by the petitioner dated 02.11.2015 under Rule 9(2) of the Rules, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order.

It is made clear that in the meanwhile, there shall not be any deduction by the 1st respondent.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//
Sub Assistant Registrar

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To
1 The Divisional Railway Manager
(Works Branch) Chennai Division
Southern Railway Park Town
Chennai 3

2 The Deputy Commercial Tax Officer
Arakkonam Assessment Circle
Arakkonam
+1 cc to Mr.A.P.Srinivas, Advocate, sr.66095
+1 cc to Mr.G.Jeremiah, Advocate, sr.65989

W.P.No.38700 of 2015

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kra 18.12.2015