

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6952, 7001, 7089 and 7117 of 2015

And

M.P.Nos.1 of 2015

Rainbow Foundations Limited
rep. by its Joint Managing Director
Gajraj Jain
No.4, Thanikachalam Road
T.Nagar, Chennai 600 017

... Petitioner in all WPs

Vs

The Assistant Commissioner (CT)
Nandanam Assessment Circle
No.46, Greenways Road
Chennai 600 028

... Respondent in all WPS

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Assessment Order TIN/33511542208/2006-2007, 2007-2008, 2009-2010 and 2008-2009 respectively dated 30.01.2015 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar in all WPS

For Respondent : Mr.A.N.R.Jayapratap, AGP(T) in all WPS

सत्यमेव जयते
C O M M O N O R D E R

The petitioner has come forward with these writ petitions challenging the orders of the respondent dated 30.01.2015.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), who took notice for the respondent.

3. The petitioner Company is a developer and a flat promoter registered under the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the TNVAT Act") with respondent. It is the case of the petitioner that they entered into an agreement with prospective flat buyers for construction of flats and sold the same with undivided share of the land. The petitioner outsourced the entire construction work to sub-contractors, who are dealers registered under the TANVAT Act, holding valid TIN, for the purpose of construction of flats. It is the further case of the petitioner that they did not undertake any part of the construction work and the sub-contractors alone purchased all the goods required for the said construction and hence there was no transfer of goods by the petitioner. When that be the case, the contention of the respondent that there were two deemed sales, one from the sub-contractor to the main contractor and the other from the main contractor to the flat buyers and hence the petitioner is liable to pay VAT on the difference between the amount received by the petitioner from flat buyers and the total payments made by them to sub-contractors is unsustainable. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner contended that the representative of the petitioner Company has not been given an opportunity of personal hearing before passing the impugned orders. Further, according to him, the decision of the Kerala High Court reported in 2014/TIOL/2226-HC Kerala-Vat (M/s Surya Constructions vs. Commercial Tax Officer (WC & LT), Ernakulam and another), has not been taken into account by the authority before passing the impugned orders.

5. The learned counsel for the petitioner further contended that the Kerala High Court, following the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh vs. Larsen & Turbo Ltd reported in ([2008] 17 VST 1 (SC)), wherein in paragraph 19, the Hon'ble Supreme Court has held thus:-

"19. If one keeps in mind the above quoted observation of this Court in the case of Builders Association of India [1989] 73 STC 370 + 2002-TIOL-602-SC-CT the position becomes clear, namely, that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reason is based on the principle of accretion of property in goods. It

is subject to the contract to the contrary. Thus, in our view, in such a case the work executed by a sub-contractor, results in a single transaction and not multiple transactions. This reasoning is also borne out by section 4(7) which refers to value of goods at the time of incorporation in the works executed. In our view, if the argument of the Department is to be accepted it would result in plurality of deemed sales which would be contrary to article 366(29A) (b) of the Constitution as held by the impugned judgment of the High Court. Moreover, it may result in double taxation which may make the said 2005 Act vulnerable to challenge as violative of article 14, 19(1)(g) and 265 of the Constitution of India as held by the High Court in its impugned judgment".

quashed the demand made by the authority concerned, by holding that there was no liability on the petitioner therein in terms of the Kerala Value Added Tax Act since there was no sale of material in the course of execution of works contract that emanated from the petitioner to the awarder of the contract and in the absence of any taxable event under the Kerala Value Added Tax Act, the respondent therein could not have demanded tax on the amounts retained by the petitioner as profits arising out of the transaction in question and a direction was given to refund the tax amount to the petitioner or, in the alternative, to give credit to the said amount in the return submitted by the petitioner therein for future periods. However, the authority concerned has not taken into account the above cited judgments, before passing the impugned orders. Hence, the impugned orders are liable to be quashed.

5. The learned counsel for the petitioner further submitted that the petitioner has also agreed to pay 5% of the tax amount as determined in the respective impugned orders and they would co.operate to enable the assessing officer to complete the proceedings afresh.

6. For the sake of convenience Section 22(4) of the TANVAT Act is extracted below:-

"(22) Procedure to be followed by Assessing Authority:-
(1) ...
(2) ...
(3)

(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard".

7. From a perusal of the impugned orders, it is clear that an opportunity of personal hearing has not been given to the representative of the petitioner, before passing the impugned orders. Hence, on the ground of non granting of personal hearing to the petitioner's representative, this Court is of the view that the impugned orders dated 30.01.2015 are liable to be set aside and the matters are to be remitted back to the authority concerned for passing appropriate orders.

8. Hence, without going into the merits of the matter, on the ground of violation of principles of natural justice, the impugned orders dated 30.01.2015 are set aside and the matters are remitted back to the respondent for passing fresh orders. The respondent is directed to accept 5% of the tax amount as determined in the respective impugned orders, which the petitioner has agreed to pay the same. On receipt of the said amount, the respondent is directed to give an opportunity of personal hearing to the representative of the petitioner as provided under Section 22(4) of the Act and decide the matter afresh on merits and in accordance with law.

9. It is made clear that it is open to the representative of the petitioner to point out the decision of the Kerala High Court reported in 2014/TIOL/2226-HC mentioned supra and also the decision of the Honble Supreme Court reported in ([2008] 17 VST 1 (SC)) at the time of giving personal hearing and the respondent is directed to take into account the submissions, if any, putforth by the representative of the petitioner and the decisions of the Kerala High Court and the Hon'ble Supreme Court mentioned supra and decide on the basis of the facts of the case which are going to be putforth by the petitioner and see whether the decisions would be applicable to the petitioner's case and then pass appropriate orders on merits and in accordance with law. In case the representative of the petitioner Company fails to avail this opportunity, the authority is empowered to pass orders afresh on merits and in accordance with law based on the available records.

The writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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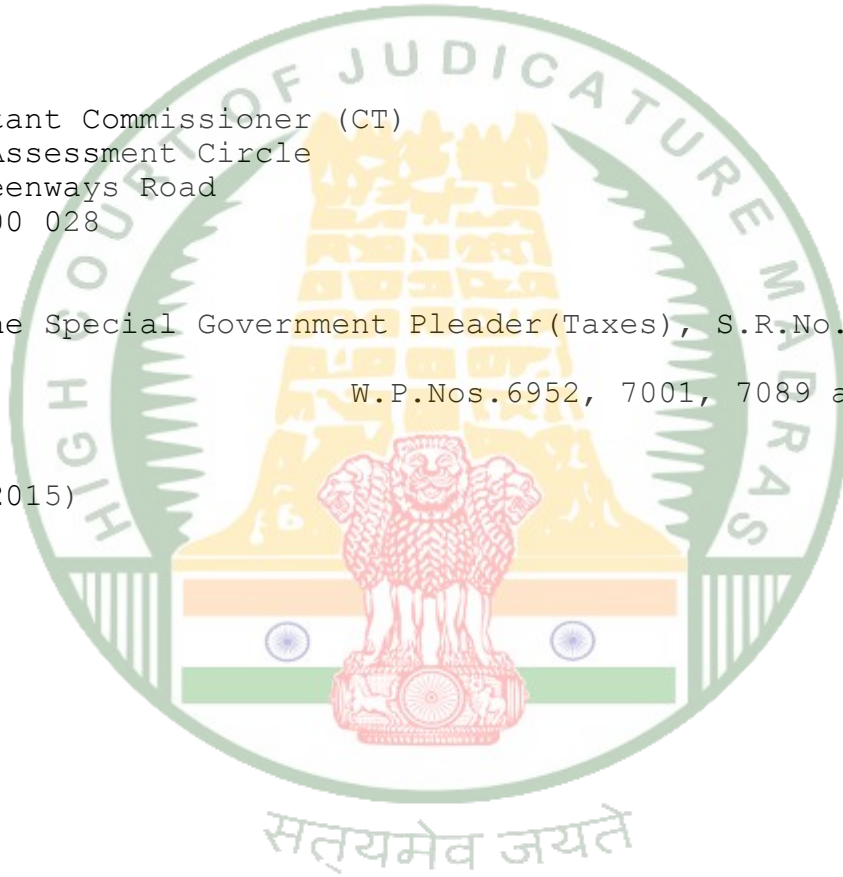
To

The Assistant Commissioner (CT)
Nandanam Assessment Circle
No.46, Greenways Road
Chennai 600 028

+1cc to the Special Government Pleader(Taxes), S.R.No.17852

W.P.Nos.6952, 7001, 7089 and 7117 of 2015

RSK(CO)
CA(10/04/2015)



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