IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.13156 of 2015 &
M.P.No.1 of 2015

M/s.Sabari Constructions Techonologies (P) Ltd.
No.1 N.G.N.Building
142, N.G. Narayanaswamy Street
New Siddhapudur,
Coimbatore - 641 012
Rep by its Managing Director
K. Vengatachalapaty .. Petitioner

v.

1 The Commissioner of Customs
Central Excise & Service Tax (Adjudication)
6/7 A.T.D. Street
Race Course Road
Coimbatore 641 018

2 The Union of India
Rep by the Secretary to the Government of India
Department of Revenue
New Delhi

3 The Government of Tamil Nadu
Rep by the Secretary to the Government
Commercial Taxes Department
Secretariat
Chennai .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent in Order No. C. No.V/CON/15/25/2014-ST ADJ/Order-in-Original No. 41/2014-Commr, dated 31.12.2014 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.A.P.Srinivas
Standing Counsel

## ORDER

The petitioner has filed the above writ petition to issue a writ of Certiorari to call for the records relating to the proceedings of the first respondent dated 31.12.2014 and to quash the same.

2. It is the case of the petitioner that the impugned proceedings have been passed without the authority by exceeding the jurisdiction and the scope of Finance Act. The respondent has failed to provide sufficient opportunity to the petitioner and has travelled beyond the scope of the notice and passed the impugned order. Further, according to the petitioner, no service tax can be levied on the deemed sale value of the goods involved in the execution of works contract and only VAT is payable. Further, the first respondent has blatantly failed to construe that definition of "non-commercial" in Circular No.80/10/2004-ST, dated 17.09.2004 was confined and concerned with the usage of the constructions by the institutions solely for educational, religion, charitable, health, sanitation or philanthropic purpose and not for the purpose of profit.

3. When the matter was listed for hearing on 29.04.2015, a representation was made before this court that in a similar writ petition, this court had reserved the matter for orders and therefore, the writ petition was adjourned to third week of June 2015.

4. When the matter was taken up for hearing, Mr.S.Raveekumar, learned counsel appearing for the petitioner, submitted that in W.P.No.7483 of 2015, this court had decided the matter, which is in favour of the petitioner herein. In paragraph No.12 of the order dated 28.07.2015, this court has held as follows:-

"12. Accordingly, the impugned proceedings, dated 28.11.2014 of the first respondent are hereby set aside and the matter is remitted back to the first respondent to deal with the issue in terms of the exemption Circular No.80, dated 17.9.2004, as to whether the constructions provided by the petitioner to the educational institutions were meant to use or to be used for academic purpose or for commercial purpose, on consideration of the relevant evidence thereof and whether the petitioner is entitled to exemption. The first respondent shall pass fresh orders within a period of four weeks from the date of receipt of a copy of this order, after providing an opportunity to the petitioner. The petitioner is permitted to produce all relevant documents and also raise further objections if any, which shall be considered by the first respondent while passing the orders."

5. Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondents 1 and 3, also submitted that the relief sought for in the present writ petition is covered by the decision of this court made in W.P.No.7483 of 2015.

6. Having regard to the submissions made by the learned counsel on either side, following the order passed in W.P.o.7483 of 2015, I pass the following order:

The Impugned proeedings dated 31.12.2014 passed by the first respondent is hereby set aside nd the matter is remitted back to the first respondents to deal with the issue in terms of the exemption circular No.80, dated 17.9.2004, as to whether the constructions provided by the petitioner to the educational institutions were meant to use or to be used for academic purpose or for commercial purpose, on consideration of the relevant evidence thereof and whether the petitioner is entitled to exemption. The first respondent shall decide the matter afresh, within a period of six weeks from the date of receipt of a copy of this order, after providing an opportunity of personal hearing to the petitioner. The Petitioner is permitted to produce all relevant documents and also raise further objections if any, which shall be considered by the first respondent while deciding the matter.

With these observations, the writ petition is allowed. No costs. Consequently, connnected miscellanoues petition is closed.

s/d-
Assistant Registrar(CO)
True Copy
Sub-Assistant Registrar

To
1 The Commissioner of Customs
Central Excise & Service Tax (Adjudication)
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2 The Union of India
Rep by the Secretary to the Government of India
Department of Revenue New Delhi

3 The Government of Tamil Nadu
Rep by the Secretary to the Government
Commercial Taxes Department Secretariat Chennai

+ 1 cc to Mr.A.P.Srinivas Advocate SR 11926
+ 1 cc to Mr.S.Ravee kumar, Advocate SR 11594
skv(co)
prk1/3 W.P.No.13156 of 2015