IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.1750 of 2016 &
W.M.P.Nos.1536 & 1537 of 2016

M/s. Chitra Constructions Private Limited,
represented by its Director,
G.Anandan
No.9, Choolaimedu High Road,
Chennai-94. ..Petitioner

Vs.

The Commissioner of Service Tax,
Service Tax Commissionerate,
Newry Towers,
No.2054-1, 2nd Avenue,
Anna Nagar, Chennai-40. ... Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorari to call for the records of the respondent in its show cause notice No.276/2013 issued vide proceedings in C.No.IV/09/82/2012-STC. Adjmn dated 7.10.2013 and quash the same.

For Petitioner : Mr.V. Vijay Shankar

For Respondent : Mr.V.Sundareswaran
Standing counsel

ORDER

The petitioner has come forward with this writ petition challenging the impugned show cause notice dated 7.10.2013 issued by the respondent vide its proceedings in C.No.IV/09/82/2012-STC. Adjmn.

2. Heard Mr.V.Vijay Shankar, learned counsel appearing for the petitioner and Mr.V.Sundareswaran, learned Standing Counsel appearing for the respondent.

3. According to the petitioner, the petitioner company was established in the year 1996 and is engaged in the business of construction and promotion of residential units. Originally,

one Govindarajan and his second wife, by name Manjula were the Directors of the Company. At present, the sons of the said Govindarajan are the directors. Whileso, a show cause notice was issued by the respondent on 7.10.2013 alleging that a sum of Rs.43,76,85,045/- was the total turnover of the petitioner company as per the balance sheet of the financial years 2008-2009, 2009-2010 and 2010-2011 and therefore directed the petitioner to pay a sum of Rs.4,50,81,560/- towards service tax and cess.

4. On receipt of the same, the original Director of the petitioner company had duly replied to the show cause notice. However, the details of the same are not made available with the present director of the petitioner and hence, the present Director made a representation dated 30.10.2015 stating that his father Govindarajan has passed away and sought for sufficient time for filing fresh objections after collecting all the details. The proposed enquiry was adjourned to 12.12.2015, on which date, the same stood posted to 19.1.2016 finally and it was clearly stated by the respondent that no further adjournment would be granted and final orders would be passed on that day. The petitioner's request for further time was negatived. Hence, the petitioner is before this Court.

6. Learned counsel for the petitioner submitted that the show cause notice issued by the respondent is relating to two properties of the petitioner viz., (i) Chitra Township in Pallavaram and (ii) property at Perungudi. As far as the property at Perugnudi is concerned, the project is in a semi constructed stage and no sales whatsoever have taken place and for the past 5 years, no construction was there and the project was abandoned and hence, the liability of the service tax does not arise. Insofar as Chitra Township at Pallavaram is concerned, completion certificate from CMDA had been obtained on 20.2.2008 and all the apartments had been sold to the buyers. Since the flats were sold at fully developed/constructed stage, after obtaining completion certificate, there is no liability to pay service tax. Therefore the petitioner is not liable for payment of service tax for the three Assessment years as stated in the show cause notice.

7. However, the learned counsel for petitioner submitted that the present Director wants to file a detailed objection afresh to the impugned show cause notice and hence, seeks sufficient time for the same. He also made it clear that no final orders have been passed sofar.

8.In view of the submission so made by the learned counsel for the petitioner, I am of the view that in order to give quietus to the issue, an opportunity is to be given to the petitioner. Accordingly, the petitioner is permitted to file their detailed objections along with supportive documents, if any, to the impugned show cause notice issued by the respondent within a period of four weeks from the date of receipt of a copy of this order and on filing of such objections, the respondent shall consider the same and pass necessary orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner within six weeks thereafter.

9. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msr

To

The Commissioner of Service Tax,
Service Tax Commissionerate,
Newry Towers,
No.2054-1, 2nd Avenue,
Anna Nagar, Chennai-40.

+1cc to Mr.V. Sundareswaran, Advocate, S.R.No.4380
+1cc to Mr.V. Vijaya Shankar, Advocate, S.R.No.4742

SV(CO)
EU(09/03/2016)

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