IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:23.11.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.30188 & 30189 of 2017 &
WMP.Nos.32813 & 32814 of 2017

M.Gunasekaran ..Petitioner/in both the petitions

Vs

1.The Divisional Railway Manager,
Chennai Division, Southern
Railway, Park Town, Chennai-3.

2.The Commercial Tax Officer,
Egmore II Assessment Circle,
Egmore, Chennai-31. ...Respondents in both the petitions

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Prohibition prohibiting the first respondent from deducting VAT at source in respect of C.A.No.348/West/MAS dated 24.10.2016 and C.A.No.161/East/MAS dated 15.4.2016.

For Petitioner : Mr.G.Jeremiah
For Respondent-1 : Mr.P.T.Ramkumar
For Respondent-2 : Mrs.Narmadha Sampath, SGP

COMMON ORDER

Mr.P.T.Ramkumar, learned Standing Counsel accepts notice for the first respondent. Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for the second respondent. By consent, the writ petitions are taken up for joint disposal.

2. The learned counsel on either side submit that an identical issue, as raised by the petitioner herein, was considered by this Court in the petitioner's own case in respect of another contract in W.P.Nos.32282, 33015 and 33016 of 2016, which were disposed of by a common order dated 21.9.2016.

3. The relevant portions of the common order dated 21.9.2016 read as follows :

> "6. The petitioner's case is that 99% of the work allotted to them is labour contract and there is a minuscule apart from where the goods transferred and probably to that extent, the Railways may be entitled to

deduct the tax ; but not at the rate of 2% of the agreement value, which would amount to taxing a contract which is not liable to be taxed. The contention advanced by the petitioner is sustainable and is in consonance with the clarification issued by the Commissioner of Sales Tax dated 08.04.2002. Therefore, the Railway Administration in stead of deducting 2% of the agreement value, they would be entitled to deduct th tax on the portion of the contract other than labour contract. This would be well within the knowledge of the Railway Administration since it is their Department which allots the work. The Railways do not dispute the fact that 99% of the work of track maintenance is labour intensive. Therefore, the deduction of tax at the rate of 2% cannot be on the entire agreement value.

7. In the light of the above, there will be a direction to the 1st respondent to evaluate the terms of the contract, nature of the contract and ascertain the component which is taxable, i.e., other than labour contract and to that extent, appropriate tax shall be deducted and remitted to the Sales Tax Department. On such returns being filed by the Railway Administration, the Sales Tax Department shall consider the returns and proceed to complete the assessments in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006.

8. The learned counsel appearing for the 1st respondent submitted that there is an apprehension on the part of the Railway Administration that if such returns are filed, they may be liable for penalty by the 2nd respondent / Sales Tax Department. The 1st respondent need not have any such apprehension because the Commissioner of Sales Tax himself has clarified that the labour contracts are not liable to sales tax and there is no need to deduct the tax deduction at source and the consumables purchased locally and used in labour contracts are not liable to tax. Therefore, the Railway Administration is the best person who will know what is the nature of the contract and if it is purely a labour

contract, the question of deducting the sales tax at source would not arise nor on the consumables purchased locally and used in the labour contract. Therefore, if such returns are filed, the question of levying penalty in the hands of the Sales Tax Department that the return is incorrect, would not arise as the Railway Administration has been directed to abide by the Circular issued by the Commissioner of Sales Tax, Government of Tamil Nadu.

9. Accordingly, the writ petition stands disposed of with the above directions/ observations."

4. In the light of the aforesaid decision dated 21.9.2016, these writ petitions are disposed of on the same lines. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS
To
1.The Divisional Railway Manager, Chennai Division, Southern Railway,
Park Town, Chennai-3.

2.The Commercial Tax Officer, Egmore II Assessment Circle, Egmore,
Chennai-31.

+2cc to M/s.P.T.Ramkumar, Advocate Sr.No.83479,83480
+1cc to special Government Pleader SR.No.83932

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WMP.Nos.32813 & 32814 of 2017

RSI(CO)
sm:15.12.2017