BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2017**

CORAM:
THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
W.A.[MD].Nos.591 and 592 of 2017

Kiran Infra Engineers Limited,
Represented by its Manager S.Nagarajan
No.17, 2nd Floor, Shringari Nagar,
Madurai-625 010. : Appellant in both Writ Appeals

Vs.

1.Assistant Commissioner (CT) FAC
Madurai Rural (South) Assessment Circle,
Madurai-625 020.
2.Chief Project Manager,
RVNL Mezzanine Floor,
Thirumayilai Railway Station,
Mylapore, Chennai-600 004.

3.Southern Railway,
Represented by Executive Signal and
Telecom Engineer Construction,
Tambaram, Southern Railway,
Chennai-600 045. : Respondents in both Writ Appeals

PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the order dated 20.04.2017 made in W.P.(MD). Nos.14843 and 14844 of 2011 respectively on the file of this Court.

WP(MD). 14843/ 2011 and 14844/2011:

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records of the case from the files of the Ist respondent herein and quash the impgned order of the ist respondent in TIN 33105163335/2011-12 dated 09/12/2011 and direct the 1st respondent to issue the FORM S to the petitioner.

For Appellant : Mr.Joseph Prabakar

For Respondent No.1 : Mr.R.Karthikeyan
Additional Government Pleader

COMMON JUDGMENT

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[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.Joseph Prabakar, learned counsel appearing for the appellant and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

2. Since the issue involved in both the Writ Appeals is common, they were taken up together and the Writ Appeals are disposed of by means of this Common Judgment.

3. Since the main Writ Appeals are taken up for final disposal at the stage of admission itself, notice to the respondents 2 and 3 is dispensed with.

4. These Writ Appeals are directed against the order dated 20.04.2017, made in W.P(MD).Nos.14843 &14844 of 2011. The Writ Petition in W.P.(MD).No.14843 of 2011 was filed by the appellant herein to issue a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent dated 09.12.2011 and for a consequential direction to the first respondent to issue Form 'S' to the appellant and the other Writ Petition in W.P.(MD).No.14844 of 2011 was filed praying for a Writ of Prohibition, restraining the respondents 2 and 3 therein from deducting any tax at source under the provisions of the Tamil Nadu Value Added Service Tax Act, 2006 in the hands of the appellant in respect of the interstate works contract executed by the appellant head office at Rajasthan.

5. The Writ Petitions were disposed of with a direction to the appellant to approach the Revisional Authority under the Act to substantiate their case for entitlement of the certificate of no liability, within a time frame. After hearing the learned counsel for the parties, elaborately, we are in entire agreement with the ultimate conclusion arrived at by the Writ Court in directing the appellant to approach the Revisional Authority, as serious disputed questions of fact have arisen for consideration. The Writ Court, while disposing of the Writ Petitions, took note of the fact that the appellant voluntarily furnished bank guarantee to the first respondent to the tune of Rs.5,00,000/- to prove their *bona fide* and complied with the direction issued by the Writ Court by furnishing two bank guarantees to the respondents 2 and 3 to the tune of Rs.15,00,000/- and Rs.10,00,000/- respectively.

6. The learned counsel for the appellant submitted that the assessment for the relevant years are over, in the sense that the assessments have been deemed to have been completed under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 and no further proceedings have been initiated by the Assessing Officer. Therefore, it is submitted that as-on-date, there is no necessity for Form 'S', as the nil returns filed by the appellant are deemed to have been accepted. However, one difficulty, which the appellant faces, is with regard to bank guarantee furnished by them. On account of the bank guarantee furnished by the appellant to the respondents 2 and 3, tax has not been deducted at source and the entire payment has been released to the appellant. The

question would be as to whether the tax had to be deducted at source. If, according to the appellant, the assessments are deemed to have been completed for the relevant years, then, the appellant should approach the concerned Assessing Officer with such a plea so as to obtain appropriate communication to enable him, not only to get the bank guarantee of Rs.5,00,000/- furnished to the first respondent revoked and also to enable him to revoke the bank guarantee furnished to the respondents 2 and 3.

7. In the light of the above, we dispose of the Writ Appeals with slight modification in the ultimate direction issued by the Writ Court. Accordingly, the Writ Appeals are disposed of, by directing the appellant to approach the first respondent/Assessing Officer by way of a detailed representation requesting for release of the bank guarantees. If such representation is submitted, the first respondent is directed to consider the same, after affording sufficient opportunity of hearing to the appellant and pass a reasoned order, on merits and in accordance with law, after taking note of the factual and legal position. The appellant is directed to submit such representation within a period of four weeks from the date of receipt of a copy of this Judgment and a decision shall be taken by the first respondent within a period of four weeks thereafter. No costs.

Sd/-
Assistant Registrar

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1.Assistant Commissioner (CT) FAC,
Madurai Rural (South) Assessment Circle,Madurai-625 020.

2.Chief Project Manager,
RVNL,Mezzanine Floor,Thirumayilai Railway Station,
Mylapore, Chennai-600 004.

3.Southern Railway,
Executive Signal and
Telecom Engineer Construction,
Tambaram, Southern Railway, Chennai-600 045.

+2cc to M/S.JOSEPH PRAPAHAR, Advocate SR.Nos.60074&60073
+1cc to Special Government Pleader, SR.No.60210

NB
MAS/MR-KKR/SAR2:13.07.2017:3P-7C

COMMON JUDGMENT MADE IN
W.A.[MD].Nos.591 and 592 of 2017
13.06.2017