BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: **18.11.2016**

ORDERS PRONOUNCED ON: **20.04.2017**

CORAM :

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD) NOS.14843 TO 14845 OF 2011

Kiran Infra Engineers Limited
No.17, 2nd Floor, Shringari Nagar,
Madurai - 625 010.
Rep. by its Manager S.Nagarajan ... Petitioner in all WPs'

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
Rep. by Executive Signal and
Telecom Engineer Construction
Tambaram, Southern Railway,
Chennai - 600 045. ... Respondent Nos. 1 to 3 in all WPs'

PRAYER IN W.P.(MD) NOS.14843 AND 14844 OF 2011: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the case from the files of the 1st respondent herein and quash the impugned order of the 1st respondent in TIN 33105163335/2011-12 dated 09.12.2011 and direct the 1st respondent to issue Form S to the petitioner.

PRAYER IN W.P.(MD) NO.14845 OF 2011: Petition filed under Article 226 of the Constitution of India to issue a Writ of Prohibition, restraining the respondents 2 and 3 herein from deducting any tax at source under the provisions of the State Act in the hands of the petitioner in respect of the interstate works contract executed by the petitioner's head office at Rajasthan.

For Petitioner : Mr.Joseph Prabhakar

For Respondent-1 : Mr.R.Karthikeyan
Additional Government Pleader

For Respondent-2 : Mr.A.Haja Mohideen

For Respondent-3 : Mr.S.Manohar

COMMON ORDER

The petitioner in W.P.(MD) Nos.14843 and 14844 of 2011, challenges the order dated 09.12.2011, passed in TIN 33105163335/2011-12, by the first respondent Assistant Commissioner (CT) FAC, Madurai Rural (South) Assessment Circle, Madurai and seeks for a direction to the first respondent to issue Form "S" to the petitioner.

2. The petitioner in W.P.(MD) No.14845 of 2011 seeks for a writ of prohibition, restraining the respondent Nos.2 and 3 from deducting any tax at source under the provisions of the State Act in the hands of the petitioner in respect of the interstate works contract executed by the petitioner's Head Office at Rajasthan.

3. The petitioner is in the business of undertaking "Works Contract" for Indian Railways. It's Head Office is situated at Rajasthan, which is a registered dealer, under Local Taxation Laws of Rajasthan. The petitioner's Head Office entered into two separate agreements with the second and third respondents, namely, Chief Project Manager, Thirumayilai Railway Station, Mylapore, Chennai and Southern Railway, Tambaram, Chennai, for an amount of Rs.2,37,28,668/- respectively, for erection and installation of railway signals. As per the agreement, the materials were to be purchased only from the dealers specified in the contract and not elsewhere. All the sellers of the materials are located outside the State of Tamil Nadu and therefore, the Head Office at Rajasthan purchased the materials from outside the State of Tamil Nadu and directly moved the goods to the warehouses of the second and third respondents inside the State of Tamil Nadu.

4. The petitioner's name does not figure anywhere in the agreement between the petitioner's Head Office and respondent Nos.2 and 3, even though the petitioner is a dealer under the Tamil Nadu Value Added Tax Act 2006 and the Central Sales Tax Act, 1956.

5. The petitioner has made two applications before the first respondent for issuance of Form "S" under the State Act and the same was received by the first respondent on 01.12.2011. The

respondent Nos.2 and 3 insisted on Form "S" for not Deducting Tax at Source.

6. As per Clause (b) to the first proviso to Section 13 (1) of the State Act, no deduction under sub-section (1) shall be made where transfer of property in goods is involved in the execution of works contract in the course of interstate trade or commerce or in the course of import. The nature of transaction involving the works contract is interstate in nature viz., the goods purchased from outside the State of Tamil Nadu are moved into Tamil Nadu for execution of the works contract. Therefore, the petitioner is not liable for any Tax Deduction at Source under the State Act.

7. The first respondent without considering the facts of the case, rejected the petitioner's applications for issuing Form "S" vide the impugned order. The petitioner has challenged the same on the grounds that the order placed on the Head Office for effecting any interstate works contract cannot be treated as an order placed on the Branch Office of the petitioner to suffer any liability under the provisions of the State Act or under the provisions of the Central Act. Therefore, the first respondent ought not to have brought the interstate works contract under the ambit of the Local Act. Since the first respondent does not have jurisdiction to deduct Tax at Source, shall not refuse to issue No Liability Certificate.

8. Since the petitioner is a dealer under Section 2(15)(iv) of the State Act, which includes the Branch Office of a non resident principal, the first respondent is bound to grant a certificate in Form "S" on deductibility. Therefore, on various other grounds, the petitioner sought to quash the impugned order passed by the first respondent rejecting the request to grant Form "S" and also sought for a direction to issue Form "S" to the petitioner.

9. The first respondent has filed a counter affidavit stating that the request of the petitioner was rejected on the ground that the petitioner has no connection to the execution of the works contract, executed between the Head Office at Jaipur and the Railways Department. For the purpose of issuing No Due Certificate, the details of purchase made within the State of Tamil Nadu shall be produced. The petitioner himself has admitted that the Head Office at Rajasthan has purchased the materials for the execution of works contract from other States and no materials were purchased within the State of Tamil Nadu. Further, the materials moved from the Head Office at Rajasthan to Railways Department is nothing to do with the petitioner and the petitioner has no connection. Simply because the petitioner registered himself as a dealer, it does not mean that the petitioner was actually executing the works and he is entitled for No Liability

Certificate. The petitioner neither entered into any agreement nor executed any works to the Railways Department. The petitioner has reported NIL turnover for the months of September and October 2011. The actual agreement is between the Head Office of the petitioner at Rajasthan and the Railways Department. If at all the No Liability Certificate is required, the Head Office has to approach the Assessing Authority of Rajasthan, in accordance with the Act and they cannot approach the State of Tamil Nadu for the purchases made at Rajasthan.

10. The judgment of ***Sahana Steel's*** case cited by the petitioner, does not apply to the present case. In the judgment cited, the Branch Office has supplied goods to comply with the order. But in the present case, the petitioner has not supplied any materials to the Railways Department. Without there being any actual supply or proof of transfer of materials, the petitioner is not entitled to get No Liability Certificate. In so far as the movement of materials by the Head Office at Rajasthan to the Railways Department at Tamil Nadu are interstate sales, in works contract, in respect of the Head Office, it is not a interstate movement in respect of the petitioner, who has registered in Tamil Nadu.

11. In the instant case, the first respondent is not the Assessing Authority in respect of the works contract executed by the Head Office at Rajasthan. But the petitioner seeks No Liability Certificate in favour of the Head Office at Rajasthan, to which the first respondent has no jurisdiction to grant No Liability Certificate. The petitioner has also not shown any purchase within the State as seen from the monthly returns filed by him. If at all the petitioner has purchased any materials within the State of Tamil Nadu, they could have paid tax under Section 5 of the TNVAT Act 2006. After paying tax only, the petitioner will be eligible for getting No Liability Certificate. Without there being any transactions and without there being any proof of movement of materials from the Head Office to the State of Tamil Nadu, the petitioner is not entitled to seek for No Liability Certificate and the writ petition is liable to be dismissed.

12. Heard the submissions made on either side and perused the materials available on record.

13. The crux of the matter revolves around Section 13(1) of the Tamil Nadu Value Added Tax Act, 2006, which reads as follows:

> "**13.Deduction of tax at source in works contract .--.** (1) Notwithstanding anything contained in this Act, every person responsible for paying any sum to any dealer for execution of

works contract shall, at the time of payment of such sum, deduct an amount calculated, at the following rate, namely:- ate, namely:-

(i) civil works contract - two per cent of the total amount payable to such dealer;

(ii) civil maintenance works contract - two per cent of the total amount payable to such dealer;

(iii) All other works contracts - four per cent of the total amount payable to such dealers.

Provided that no deduction under sub-section (1) shall be made where --

(a) no transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract; or

(b) transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract in the course of inter-State trade or commerce or in the course of import; or

(c) the dealer produces a certificate in such form as may be prescribed from the assessing authority concerned that he has no liability to pay or has paid the tax under section 5:

Provided further that no such deduction shall be made under this Section, where the amount or the aggregate of the amount paid or credited or likely to be paid or credited, during the year, by such person to the dealer for execution of the works contract including civil works contract does not or is not likely to, exceed rupees one lakh."

14. A reading of the above proviso specify that every person responsible for paying any sum to any dealer for execution of works contract shall deduct an amount calculated at the rates specified therein. The proviso to Section 13(1) gives exemption where the deduction shall not be made.

15. According to the petitioner, as per proviso (b) to Section 13(1) which specifies the transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract, in the course of interstate trade or commerce or in the course of import. According to the petitioner, the Head Office at Rajasthan purchased all the goods at Rajasthan and moved the goods to Tamil Nadu for executing the works contracts. Admittedly, the agreement is between the Head Office at Rajasthan and the Indian Railways. The petitioner nowhere figures in the agreement.

16. In support of their case, the petitioner has produced the statement of purchase made by the Head Office from various dealers for the purpose of supplying of goods to the work site at Chennai. But the details of purchase does not disclose as to when these materials were supplied to the petitioner and the proof of supply and receipt of the same.

17. In the absence of any details, it cannot be presumed that those goods were actually moved from various places as specified in the details, to the petitioner, at Tamil Nadu. A statement is made by the first respondent in their counter that the petitioner has not purchased any materials at Tamil Nadu and there is no proof that the petitioner - dealer is involved in the works contract by purchasing materials within the State of Tamil Nadu or moving materials during the course of interstate sales. The petitioner has filed monthly returns clearly reveals that they have not made any purchase within the State of Tamil Nadu as stated by the first respondent.

18. Therefore, it is clearly seen that as per the statement of the petitioner, they have neither purchased any goods within the State of Tamil Nadu nor produced any proof of interstate movement to the State of Tamil Nadu and not even a scrap of transit pass produced before the authority. The petitioner would further claim that the alternative remedy under the State Act is not efficacious.

19. In the instant case, the dealer has neither shown that he is a party to the works contract as shown in the agreement entered into between the Head Office and the Indian Railways; not has purchased any materials within the State of Tamil Nadu and suffered tax. They have not shown that they actually moved the goods from various places to the warehouses of the second and third respondents; lastly, the petitioner has not shown any connection to the works contract that has executed by the Head Office at Rajasthan through them. The petitioner has filed NIL returns every month. In the absence of accrual of right to raise a cause of action by the petitioner, this Court is not inclined to delve into the merits of the matter.

20. Be that as it may, this proof of interstate movement, tax reference and the details of goods supplied were all factual aspects which has to be dealt with by the revisional authority under Section 54 Tamil Nadu Value Added Tax Act 2006. This Court cannot delve into the factual aspects and conduct a roving enquiry. Therefore, it is for the petitioner to approach the revisional authority with valid materials which entitled them to get "S" Form. When there is an alternative remedy available under the Act, this Court cannot deal with the factual aspects under Article 226 of the Constitution of India. Under these circumstances, the writ petition is not maintainable.

21. Record of proceedings shows that while this Court admitting the writ petition, the petitioner has stated that they have given a Bank Guarantee voluntarily to the tune of Rs.5,00,000/- to the first respondent to prove their *bonafide*. So also, the petitioner was directed to furnish a Bank Guarantee for a sum of Rs.15,00,000/- to the second respondent and Rs.10,00,000/- to the third respondent, for want of interim direction. Subsequently, this Court considers that an opportunity should be given to the petitioner to file a revision before the competent authority with materials. In such circumstances, the period taken during the pendency of the writ petition has to be exempted. In consideration of the above matter, this Court grants 30 days time to the petitioner for filing a revision before the appropriate authority with materials to prove his case.

22. Accordingly, all the writ petitions are disposed of with a direction to the petitioner to approach the revisional authority under the Act to substantiate his case for the entitlement of Certificate of No Liability, within thirty days (30 days) from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

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

+1cc to Mr.A.HAJA MOHIDEEN Advocate in SR. No.53411
+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.53294
+1cc to Mr.S.MONOHAR Advocate in SR. No.53341
TK
JS/SV.MMS/7P-7C/5.05.2017