*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE MS. JUSTICE J. UMA DEVI

+WRIT PETITION No. 7384 of 2017

% 27-03-2017

P. Sivasankar Reddy .. Petitioner

Vs.

$ The Union of India, rep. through the Secretary (Revenue), Ministry of Finance, Department of Revenue, New Delhi, and two others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Mr. K.S. Murthy

^ Counsel for respondents : Mr. B. Narayana Reddy,
the Assistant Solicitor General

? CASES REFERRED : --

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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WRIT PETITION No. 7384 of 2017

ORDER: ***(Per VRS,J)***

As against an order in original confirming a demand of service tax to the tune of Rs.7,37,830/-, a person, who undertook the contract of annual maintenance of various buildings in Tirumala Tirupati Devasthanam, has come up with the present writ petition.

2. Heard Mr. K.S. Murthy, learned counsel for the petitioner, and Mr. B. Narayana Reddy, learned Assistant Solicitor General, appearing for the respondents.

3. It is clear from the impugned order that despite opportunities given to the petitioner, he did not file any response. However, he seems to have appeared for personal hearing. Therefore, naturally the submissions made at the time of personal hearing were without any basis.

4. The main ground of attack to the impugned order is that service tax is demanded on the gross amount. The gross amount included materials, such as paints, etc., sold. Therefore, assuming that there was a service rendered, the service part of the contract was not independently assessed.

5. It is clear from the Paragraph 4.3 of the order in original that the gross amount has been taken into account. Since the petitioner could not produce the break-up, the respondents appear to have proceeded to tax the gross amount. Therefore, we are of the considered view that the matter could be remitted back to find out the portion that is attributable to service and the portion that is attributable to the sale of materials.

6. In view of the above, the Writ Petition is allowed, the impugned order is set aside, and the matter remitted back to the 3rd respondent. The petitioner shall file his objections to the show-cause-notice on or before 10.04.2017. Thereafter, the 3rd respondent shall fix a date for personal hearing. On that date, the petitioner shall produce the records to show the quantum as well as the value of materials sold and delivered, together with proof of having paid any value added tax, if leviable on those items. Thereafter, the 3rd respondent shall pass orders afresh.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

27th March, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No. 7384 of 2017
(Allowed)

27th March, 2017

cbs