IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.30093 of 2010
and
M.P.No.1 of 2010

M/s.Palani Marbles & Granites
2, Venkateswara Nagar, Maduravoil
Chennai- 600 095.
Now at: No.411-414, Poonamallee High Road,
Chennai- 600 095
rep by its Partner. ... Petitioner

Vs

The Assistant Commissioner (CT)
Koyambedu Assessment Circle,
Chennai. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records of the respondent in TNGST.1348213/2006-07 and quash the proceedings dated 25.11.2010 issued therein.

For petitioner : Mr.L.Muralikrishnan

For respondent : Mr.Hariharan
Additional Government Pleader

O R D E R

The petitioner has come up with the present writ petition to quash the notice dated 25.11.2010 issued by the respondent relating to the assessment year 2006-07. By the impugned notice, it was proposed to revise the assessment under Section 16(1)(b) of the TNGST Act and to levy tax at 12% on a turnover of Rs.1,21,94,649/- with surcharge, on the ground that the marbles supplied by the petitioner as per the required quantity at different sizes, cannot be treated as work contract.

2.When the matter was taken up for consideration, the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent jointly submitted that the issue involved herein came up for consideration in W.P.No.26831 of 2007, in which, by order dated 06.02.2008, this Court decided the matter in favour of the petitioner/assessee. They further submitted that as against the said order, the respondent/Assessing Officer went on appeal in W.A.No.1536 of 2010 and the same was dismissed by judgment dated 04.07.2017. The relevant portion of the said judgment reads as under:

> "18. As the issue was pending in the Hon'ble Apex Court, when the instant Writ Appeal was filed and taking note of the fact that the revision of assessment for the year 2004-05, under the TNGST Act, 1969, was sought to be made, by issuance of a show cause notice, dated 13.07.2007, the contention of the learned Special Government Pleader (Taxes), cannot be countenanced. Further, it is well settled principles of law that the decision of the Hon'ble Supreme Court, rendered subsequently, on the same issue, can be taken note of, in pending litigation, on the file of the Courts.
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> 19. Instant Writ Appeal has been filed solely based on the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh v. Kone Elevators (India) Ltd., reported in (2005) 140 STC 22. Subsequently, in 2014, the Hon'ble Supreme Court has re-visited the decision rendered earlier and accordingly, answered that the manufacture, supply and installation of lift, etc., would fall within the ambit of "Works Contract". Decision of the Hon'ble Supreme Court reported in 2014 (7) SCC 1, squarely applies to the pending appeal.
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> 20. In the light of the above discussion and decisions, we are of the view that the appellant has not made out a strong case for reversal. There are no merits in the appeal and hence, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed."

3.Applying the same herein, this Court is of the view that there is no scope for revising the assessment order passed by the respondent. Hence, the impugned notice issued by the respondent is liable to be set aside.

4.Accordingly, this Writ Petition is allowed and the impugned notice dated 25.11.2010 bearing TNGST No.1348213/2006-07 issued by the respondent is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

arr

To

The Assistant Commissioner (CT)
Koyambedu Assessment Circle,
Chennai.

+1cc to Mr. L.Muralikrishnan, Advocate, S.R.No. 44790

W.P.No.30093 of 2010

GN(27/09/2018)