IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11464 of 2007

M/s.KMC-Oriental-BSCPL (JV)
Represented by its Chief Project Manager
Mr.M.K.Dasgupta
41/256,Ground Floor
Apple Street, Periyar Nagar South
Virudhachalam-606001
Cuddalore District. ... Petitioner

Vs.

1.The Special Commissioner &
Commissioner or Commercial Taxes
Chepauk
Chennai-600 005.

2.The Project Director
Tamil Nadu Road Sector Project
48,Dr Muthulakshmi Salai
2nd Floor, Housing Board Complex
Adyar, Chennai-600 020. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the clarification in Lr.No.K.Dis/Acts Cell-I/60147/06 dated 28.11.06 on the file of the first respondent, quash the same.

For Petitioner : Mr.K.Magesh

For Respondents : Ms.G.Dhanamadhri
Government Advocate FOR R-1

O R D E R

Heard Mr.K.Magesh, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing on behalf of the first respondent. Though notice has been served on the second respondent and his name is printed in the cause list, none appears for the second respondent.

2.The petitioner is aggrieved by the unilateral decision taken by the first respondent without notice to the petitioner by giving a clarification to the second respondent with regard to the nature of work done by the petitioner for the second respondent.

3.The petitioner is a contractor, who has been awarded contract by the second respondent / the Project Director, Tamil Nadu Road Sector Project for the purpose of laying a road.

4.It appears that the second respondent addressed the first respondent by letter dated 18.10.2006 clearly setting out the nature of activities done by the petitioner and requesting that they may be permitted to deduct sales tax at 2% in respect of the road work executed and up-gradation for Tamil Nadu Road Sector Project.

5.Unfortunately, the first respondent did not consider the fact that the petitioner /assessee would be affected by any clarification which would be given by the first respondent. Therefore, the first respondent should have given notice to the petitioner /assessee. Without doing so, by a single line order stated that the contractor is liable to be taxed at 4%. Since the petitioner had no opportunity to put forth their case and the petitioner company being an aggrieved person, ought to have been heard, the impugned clarification has to be held unsustainable.

6.For the above reasons, the writ petition is allowed and the impugned clarification is set aside. No costs.

maya

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Special Commissioner &
Commissioner or Commercial Taxes
Chepauk
Chennai-600 005.

+1CC to MR.R.KARTHIKEYAN Advocate SR.NO.4657
+1CC to SPL. GOVT. [TAXES] SR.NO.5234

W.P.No.11464 of 2007

NM[CO]
MK:20/02/2018