

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.10.2018

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.26286 of 2018
and
W.M.P.Nos.30536 & 30546 of 2018

M/s.Malathy Constructions
Proprietorship Firm

Represented by its Proprietor Y.Ramachandraiah
No.25-5-310, 8th Cross Road,
Sanjay Gandhi Road, Nellore - 524 004.
Andhra Pradesh.

... Petitioner

Vs.

1.Union of India
Represented by its Secretary to Government of India
Ministry of Railways
Rail Bhavan, New Delhi.

2.The Chairman
Railway Board
Rail Bhavan, New Delhi.

3.The General Manager
Office of the General Manager
Southern Railway
Park Town, Chennai-600 003.

4.The Divisional Engineer (South)
Office of Divisional Railway Manager
Works Branch,
Southern Railway
Park Town, Chennai-600 003.

5.The Financial Advisor & Chief Accounts Officer
C/o.Office of the General Manager
Southern Railway
Park Town, Chennai-600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARI, calling for the records of the 4th respondent with reference to the tax entry in the Top Sheet for the Bill No.CC/IV/01/CGL/203 dated 02.01.2018 along with Tax Invoice No.MAS/262/S/2014/01 dated 02.01.2018 and quash the same.

For Petitioner : Mr.Velayutham Pichaiya

For Respondents : Mr.P.T.Ramkumar
standing counsel

O R D E R

Mr.P.T.Ramkumar, learned standing counsel takes notice for the respondents. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

3. The petitioner has filed the present writ petition aggrieved against the tax entry made in the Top Sheet for the Bill No.CC/IV/01/CGL/203 dated 02.01.2018 along with Tax Invoice No.MAS/262/S/2014/01 dated 02.01.2018.

4. According to the petitioner, they cannot be compelled to pay tax on their contractual work to the Railway, when the said activity does not by itself amount to a service as contemplated by either CGST or SGST Acts, 2017.

5. Though the learned counsel for the petitioner sought to justify the above contention by inviting various provisions of law, this Court is not inclined to go into such issue on the simple reason that the proceedings under challenge is nothing, but a internal communication viz., the Top Sheet, as admittedly, no order has been passed against the petitioner with a demand. The very same petitioner has already approached this Court and filed WP.No.21272 of 2018, challenging the calculation of the Top Sheet, relating to the petitioner's Bill dated 23.03.2018. This Court disposed the above said writ petition, by granting liberty to the petitioner to make a fresh representation before the Senior Divisional Engineer, Chennai Division (West), and with a further direction to the said official to consider the said representation and pass appropriate orders/communication on merits. Therefore, if the petitioner is having any grievance in respect of the entry made in the internal communication viz., Top Sheet, in the absence of any individual communication/order sent to the petitioner, it is for them to approach the fourth respondent herein and make a representation, by ventilating their grievance.

6. The learned standing counsel for the respondent submitted that if any representation is made, the same will be considered and appropriate orders will be passed.

7. Therefore, without expressing any view on the merits of the matter, this writ petition is disposed of, by granting

liberty to the petitioner to make a representation to the fourth respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the fourth respondent shall consider the same and pass appropriate orders on merits and in accordance with law within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of India,
Union of India
Ministry of Railways
Rail Bhavan, New Delhi.
- 2.The Chairman
Railway Board
Rail Bhavan, New Delhi.
- 3.The General Manager
Office of the General Manager
Southern Railway
Park Town, Chennai-600 003.
- 4.The Divisional Engineer (South)
Office of Divisional Railway Manager
Works Branch,
Southern Railway
Park Town, Chennai-600 003.
- 5.The Financial Advisor & Chief Accounts Officer
C/o.Office of the General Manager
Southern Railway
Park Town, Chennai-600 003.

+2ccs to Mr.Velayutham Pichaiya, Advocate, S.R.No.68891
+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.68940

W.P.No.26286 of 2018

CA(CO)

rrs 25/10/2018