IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.10938 of 2009
and M.P.No.1 of 2009

M/s.Orchid Designs Private Limited
No.3, Muthial Reddy Street,
Alandur, Chennai-600 016. ... Petitioner

Vs

The Commercial Tax Officer,
Alandur Assessment Circle,
Chennai-16. ... Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent in TNGST 0842961/2005-06 and quash the order dated 08.05.2009 made therein.

For Petitioner : Mr.C.Bakthasiromoni

For Respondent : Ms.Dhanamadhuri,
Government Advocate

O R D E R

The petitioner has come up with this writ petition challenging the assessment order dated 08.05.2009 passed by the respondent herein, on the ground that the same has been issued without jurisdiction.

2.The issue involved in this writ petition is as to whether the transaction made by the petitioner-Company has to be treated as Works Contract or Direct Sale.

3.When this writ petition was taken up for hearing, the learned counsel for the petitioner has submitted that the impugned order of assessment was passed by the respondent relying upon the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh vs. Kone Elevators (India) Limited, reported in (2005) 140 STC 22 (SC); that the said issue was subsequently taken up by the Hon'ble Supreme Court itself and a judgment was passed in Kone Elevator India Pvt.Ltd. vs. State of Tamil Nadu and others, reported in (2014) 71 VST 1 (SC), in which it has been categorically held that the manufacture, supply and installation of Lifts / Elevators comes under the definition of 'Sale' and not 'Works Contract'. The transaction that is involved in the present case is with regard to the contract for designing, supplying and installing Modern Kitchens / Wardrobes. The scope of work undertaken by the petitioner includes measurement of the kitchen area, preparation of design regarding the type of module according to the space available, alterations in civil work, manufacture and supply of panels and shelves and erection and commissioning at the work site. The learned counsel for the petitioner has submitted that since the transactions involved in the present case and in the judgment of the Hon'ble Supreme Court in (2014) 71 VST 1 (SC), relate to supply of materials and labour, the said judgment of the Hon'ble Supreme Court is squarely applicable to the present case. Stating so, he prayed for quashing the impugned order and to remit the matter to the respondent for passing fresh order, in the light of the decision of the Hon'ble Supreme Court in (2014) 71 VST 1 (SC).

4.The learned counsel for the respondent fairly conceded the prayer of the petitioner.

5.This Court has perused the above judgments of the Hon'ble Supreme Court and is of the view that the issue involved in the present writ petition is squarely covered by the decision of the Hon'ble Supreme Court in (2014) 71 VST 1 (SC), wherein the Hon'ble Supreme Court remitted the matter to the authorities with a direction to look into the contract entered into between the parties and thereafter decide the nature of the transactions. Hence the impugned assessment order is set aside and the matter is remitted to the respondent for passing fresh order in the light of the judgment of the Hon'ble Supreme Court in (2014) 71 VST 1 (SC), within a period of six weeks from the date of receipt of a copy of this order.

6.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KM

To

The Commercial Tax Officer,
Alandur Assessment Circle,
Chennai-16.

+1cc The Government Pleader (Taxes) sr.no.1141
+1cc to Mr.C.Bakthasiromoni, Advocate sr.no.967

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nr 04/03/2019