IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.10957 and 10958 of 2009
& M.P.Nos.1 and 1 of 2009

M/s.Sairam Boiler Engineers (P) Ltd.,
represented by its Director,
Mr.Venkatrama Subramani ...Petitioner in both W.Ps

Vs

The Assistant Commissioner (CT),
Ashok Nagar Assessment Circle (FAC)
Chennai. ... Respondent in both W.Ps

Prayer: PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the respondent in TNGST No.1423091/2004-05 and 2005-06 and to quash the impugned proceedings dated 22.05.2009 as one issued without jurisdiction in view of the law laid down by this Court in the case of Sinetech in W.P.No.26831 of 2007.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Haribabu, AGP(T)

C O M M O N O R D E R

The petitioner challenges orders of assessment for the periods 2004-05 and 2005-06 in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short, 'Act').

2. The petitioner is a works contractor and had availed of a Scheme of compounding in terms of Section 7-C(3) of the Act. The option so exercised was accepted by the Assessing Authority in the original orders of assessment dated 25.10.2006 and 26.03.2007 respectively. Thereafter, the respondent Assessing Officer appears to have taken the view that the transactions would not be liable to be compounded insofar as it did not

constitute a works contract, but was instead a contract of sale.

3. A revision notice dated 29.04.2008 was issued by the respondent, apparently inspired by a decision of the Supreme Court in the case of Kone Elevators (India) Ltd. V. State of Andhra Pradesh (140 STC 22). Relying on the ratio of the same, the Assessing Authority proposed to treat the transactions in question as contracts of sale and not as contracts of supply and labour.

4. Despite objections raised by the petitioner/assessee, the impugned orders of assessment came to be passed confirming the proposals for revision. The Officer, inter alia, specifically refers to the judgment of the Supreme Court in the case of Kone Elevators (supra).

5. It is the aforesaid orders that are impugned in these Writ Petitions. Though an argument has been raised on the validity of the re-assessment notices itself and on the assumption of the jurisdiction by the Assessing Authority relying on the decision of a learned single Judge of this Court in the case of Sinetech V. Commercial Tax Officer, Korattur Assessment Circle, Chennai ((2008) 15 VST 308), confirmed by the Division Bench by order dated 04.07.2017, Mr.Haribabu, learned Additional Government Pleader, points out that the Department has filed a petition for review of the aforesaid decision and hence requests that this matter be taken up after the petition for review is decided.

6. However, as far as merits are concerned, the judgment of the Supreme Court in 140 STC 22 has been reversed by a Full Bench of the Supreme Court in the case of Kone Elevators India Pvt. Ltd. V. State of Tamil Nadu ((2014) 71 VST 1), wherein the Bench takes the view that a contract for manufacture, supply and installation of lift is a works contract and not a contract for sale.

7. So too in the present case the petitioner is engaged in the business of supply, fabrication and erection of boiler accessories and erection and commissioning of main boilers at the site of the customers, which would be a works contract and not a contract for sale.

8. Furthermore, the nature of transaction carried on by the petitioner is not in dispute insofar as no counter has been filed in this matter and the averments of the petitioner in this regard, remain unchallenged.

9. The question regarding the assumption of jurisdiction is left open to be pending a decision being taken by the Division Bench in the Review Petition. These Writ Petitions are allowed

solely on the merits of the matter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Ashok Nagar Assessment Circle (FAC)
Chennai.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No. 86692
+1cc to the Special Government Pleader(Taxes), S.R.No. 87452

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PP(CO)

GN(21/11/2019)