IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.47407 of 2006
and
M.P. No.1 of 2006

M/s.Tirupur Textiles P Ltd.,
No.1, Anuparpalayam, Tirupur ...Petitioner

Vs

1.The Commercial Tax Officer,
Tirupur (Rural)

2.M/s.Suzlon Developers Pvt. Ltd.,
108, 2nd Floor, Race Course Road,
Coimbatore - 641 018.

3.The Commercial Tax Officer,
Avinashi Road Circle,
Dr.Balasundaram Road,
Coimbatore 641 037. ... Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TNGST.2380019/2004-05 and quash the order dated 27.09.2006 passed therein and further direct the 1st respondent not to decide the nature of the contract and the tax liability of the second respondent in the absence of any such powers conferred on him (first respondent) under the provisions of the TNGST Act, 1959.

For Petitioner : Mr.B.Raveendran for
M/s.Chandran & Ramani

For Respondents : Mr.V.Haribabu, AGP

O R D E R

The petitioner had engaged M/s.Suzlon Developers Private Limited (in short 'R2') to carry out certain works contracts, deducting tax at the rate of 2% in respect of such works categorising the same as 'civil works contracts' in terms of Section 7-C of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). The impugned order of assessment dated 27.09.2006 relating to the period 2004-05 was passed on the basis that the nature of transaction in the hands of R2 would not be a 'civil works contract' but 'other works contract' liable to tax at 4% under section 7-C(2) of the Act. Hence the Assessing Authority proposed to demand tax at the rate of 4%, being the rate applicable to other work contracts from the petitioner, apart from levying penalty.

2. To a specific query put to the respondents in regard to the categorisation of the transaction in the hands of R2, Mr.Haribabu, learned Additional Government Pleader confirms that neither the records of assessment of R2 nor the status of assessments are available.

3. Mr.B.Raveendran, learned counsel for the petitioner has circulated Form XXXVII-A, being 'Certificate of deduction of sales tax at source' confirming that the petitioner had deducted tax only at the rate of 2%. At this juncture, Mr.Haribabu, fairly, does not pursue or defend the impugned assessment any longer seeing as what has been deducted by the petitioner is only tax at the rate of 2%.

4. Recording the same, this Writ Petition is allowed and the impugned order is set aside. Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkp

To
1.The Commercial Tax Officer,
Tirupur (Rural)

2.The Commercial Tax Officer,
Avinashi Road Circle,
Dr.Balasundaram Road, Coimbatore 641 037.

+1cc to the Special Government Pleader SR.86611
+1cc to Mr.B.Raveendran, Advocate Sr.86276

Writ Petition No.47407 of 2006
and
M.P. Nos 1 of 2009

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srg 21/11/2019