IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8253 of 2006
and
W.M.P.No.9181 of 2006

Tvl.Mathi Constructions,
Rep. by its Managing Partner
K.Karthikeya
204, Annur Road,
Mettupalayam. ...Petitioner

Vs

The Commercial Tax Officer,
Mettupalayam Assessment Circle,
Mettupalayam. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the files of the respondent in TNGST.Asst.No.2041995/02-03 dated 31.10.2005 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Haribabu, AGP

O R D E R

The impugned assessment order seeks to levy tax for the additional class rooms and compound wall put up by way of new construction at ADW College Boys Hostel, Erode.

2. The objections of the petitioner was that such additional construction of new class rooms and compound wall is a "Civil Works Contract", for which the tax is leviable at 2% and the objections of the Department that such construction will not fall under the definition of "Civil Works Contract", is incorrect.

3. Section 7-C of the TNGST Act and the relevant explanation to Section 7-C(4) reads as follows:

> "Section 7-C. Payment of tax at compounded rates by works contractor - Notwithstanding anything contained in Section 3-B, every dealer referred to in item (vi) of clause (g) of Section 2, may, at his option, instead of paying tax in accordance with Section 3-B, pay, [either on the total value of each works contract or on the total value of all works contract, executed by him in a year,] tax calculated at the following rate, namely:-
>
> (i) Civil Works Contract Two per cent of the total contractor value of the civil works executed;
>
> (ii) All other works contracts Four per cent of the total contractor value of the works executed
>
> Section 7-C(4).....
>
> Explanation: For the purpose of this section "civil works contract", means civil works of construction of new building, bridge, road, runway, dam or canal including any lining, tiling, painting or decorating which is an inherent part of the new construction; but shall not include any repair, maintenance, improvement or upgradation of such civil work by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall paneling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement on an existing structure."

4. In the impugned assessment order, the Department has taken a stand that construction of additional class rooms and compound wall to the hostel will fall under other works as per the explanation under Section 7-C (4) of the TNGST Act and that "Civil Works Contract" shall not include any repair, maintenance, improvement and upgradation of civil works. As such, their works fall under improvement or upgradation.

5. This Court is not in agreement with such a reasoning given in the assessment order. The explanation to Section 7-C(4) of the TNGST Act, extracted above, does not exclude and speak of the improvement or upgradation alone, but reference has been made to the improvement and upgradation of "such civil work",

referred to in the first portion of the explanation, by means of fixing and laying of accessories or other services. As per the explanation, if such improvement is made to an existing structure, it can be said that they will not come under the purview of definition of "Civil Works Contract".

6. In the instant case, the construction of the class rooms and the compound wall are new civil structures, which cannot be termed to be an improvement on the existing structure and as such, the respondent is not justified in treating the same as "Civil Works Contract" and levying 4% on the same.

7. In view of the findings of this Court that such a construction will not amount to Civil Works Contract, the levy of penalty also cannot be sustained.

8. In the light of these observations, if a direction is given to the Assessing Officer to review the assessment order, the ends of justice would be secured.

9. For all the foregoing reasons, the assessment order dated 31.10.2005 on file of the respondent in TNGST.Asst.No.2041995/02-03, is set aside and consequently, the matter is remanded back to the respondent, who shall reassess the assessment order, after taking into consideration the findings rendered in this order and conduct such proceedings, after giving due opportunity of personal hearing to the petitioner and complete such proceedings preferably within a period of 3 months from the date of receipt of copy of this order.

10. Accordingly, the writ petition stands ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Mettupalayam Assessment Circle,
Mettupalayam.

+1cc to Mr.R.Senniappan, Advocate sr.63930
+1cc to Special Government Pleader sr.64269

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