IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.34399 of 2019
WMP.No.35074 of 2019

M/s. Indriya Construction Company
Rep. by its Partner:
Mr.Gomathi Sankar R ...Petitioner

--Vs--

1.The Additional Commissioner,
Chennai Audit II Commissionerate
No.692, 6th Floor, MHU Complex,
Nandanam, Chennai-600 035
2.The Additional/Joint Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.690, MHU Complex, Nandanam,
Chennai-600 035
3.Central Board of Indirect Taxes & Customs,
by its Chairman
Ministry of Finance,
North Block,
New Delhi. ...Respondents

PRAYER: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the impugned show cause notice No.18/2019 (ADC) dated 23.10.2019 issued by the 1st respondent and to quash the same as contrary to the Master Circular No.1053/02/2017-CX dated 10.03.2017 issued by the 3rd respondent barred by limitation and without authority of law.

For Petitioner : Mr.M.A.Mudi Mannan
For Respondents : Mrs. Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner has challenged a show cause notice dated 23.10.2019 on the point that the procedure set out for adjudication/assessment has not been followed, insofar as there is no pre-consultative process that has been followed in this case.

2. When the matter had come up for admission, after having heard Mr.M.A.Mudi Mannan, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent, the following order was passed on 16.12.2019:

> 2.Mr.M.A.Mudi Mannan is agreeable to the Assessing Authority/2nd respondent affording a pre-decisional consultative hearing, at this stage. Learned Senior Standing Counsel for the respondents also expresses no objections to this suggestion of hearing the petitioner by way of pre-adjudication consultative process, prior to proceeding with the show cause notice, if at all.
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> 3.Thus, in the light of the aforesaid and without this being a precedent, the petitioner is permitted to appear before the 2nd respondent on Thursday, 2nd January, 2020 at 10.30 a.m. without expecting any further notice in this regard. Let appropriate orders be passed by the Assessing Authority, after hearing the petitioner, uninfluenced by the remarks/order passed by the Audit team.

3. The petitioner appeared before the second respondent on 02.01.2020 and after hearing the petitioner a pre-adjudication consultation has been been afforded and a pre-consultative order passed by the Assessing Officer on 09.01.2020. The petitioner has been heard on the following five points as crystallized by the Officer:

> Point Nos. 1 & 2: Short payment of Service Tax on account of mis-representating consturction agreement as composite works contract and discharging Service tax @ 40% of the gross amount - V.O. Chidamparanar Port, RITES and DBGT projects
>
> Point No.3: Incorrect adoption of value on Works Contract Service on office and lab interior work (Alex Stewart International P Ltd.
>
> Point No.4: Incorrect adoption of value on Works Contract Service on Maintenance or R epair of immovable property (Chennai Urology and Robotics Institutes P Ltd).

Point No.5: Incorrect adoption of value on Works Contract Service on Maintenance or Repair of immovable property (Gurudev Motors).

He has finally come to the conclusion that there could be no amicable resolution of the matter inter se the parties. Order dated 09.01.2020 has been made available to the learned counsel for the petitioner who agrees that the five points in respect of which the adjudicative/consultative proceedings were conducted are identical to those raised in the show cause notice. With the passing of order dated 09.01.2020, the proceedings stand regularised and proceedings for assessment/adjudication would thus have to go on.

4. What remains, is to deal with paragraph 11 of the impugned show cause notice, where the Officer refers to the discussion that the assessee has had with the Audit Commissioner and, based on such discussion, comes to the conclusion that there would be no purpose served by pre-adjudication/consultation.

5. Evidently, the pre-adjudication/consultation envisaged is with the Assessing Officer and not with the Audit Commissioner and this error has been rectified by order dated 09.01.2020. To this extent paragraph 11 of the impugned show cause notice is set aside. With the regularisation of the procedure, proceedings under the impugned show cause notice will continue.

6. The petitioner is at liberty to file objections to the SCN within two weeks from date of receipt of a copy of this order and proceedings will be completed by the Assessing Officer after hearing the petitioner in person.

7. This writ petition is disposed in the aforesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

SKA

To

1.The Additional Commissioner,
Chennai Audit II Commissionerate
No.692, 6th Floor, MHU Complex,
Nandanam, Chennai-600 035

2.The Additional/Joint Commissioner of GST &
Central Excise,
Chennai South Commissionerate,
No.690, MHU Complex, Nandanam,
Chennai-600 035

3.Central Board of Indirect Taxes & Customs,
by its Chairman
Ministry of Finance,
North Block,
New Delhi.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.7943

+1cc to Mrs.Hema Muralikrishan, Senior Standing Counsel, S.R.No.7721.

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adl/29.05.2020