IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2012

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.22678 of 2012
and
M.P.No.1 of 2012

Sree Balaji Medical College & Hospital,
No.7, Works Road,
Chromepet,
Chennai-600 044,
Represented by its Dean
Dr.S.Balakrishnan ... Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and
Registration Department,
Fort St.George,
Chennai-600 009.

2.The Deputy Commissioner (CT),
Enforcement South,
Greams Road,
Chennai-600 006

3.The Assistant Commissioner (CT),
Tambaram-I Assessment Circle,
Chennai-600 045 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the impugned proceedings of the 3rd Respondent herein made in TIN/33570887231/2009-10 dated 27.04.2012 and Quash the same and consequently restraining the 3rd Respondent herein from levying and collecting taxes on rendering diagnostic services on X-Ray films, CT films, MRI films and medical gases for impatient treatments and other allied medical services to the patients at the petitioner's medical college hospital.

For petitioner : Ms.G.Sumitra

For respondents : Mr.P.H.Arvind Pandiyan
Additional Advocate General
for Mr.A.R.Jayapratap
Government Advocate (Taxes)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.P.H.Arvind Pandiyan, learned Additional Advocate General appearing for the respondents.

2. The main contention of the learned counsel appearing for the petitioner is that the professional services rendered by the Doctors of the petitioner Medical college hospital, under the nature of diagnostic services on X-Ray Films and supply of medical gases and implants, which are used during the course of treatment to patients, would not amount to transfer of property in goods or an incident of contract of service, under the scope of 'works contract', as per Article 366 (29A) (b) of the Constitution of India and under Section 2(33) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the impugned notice issued by the third respondent, relating to the assessment year 2010-2011, under the Tamil Nadu Value Added Tax Act, 2006, is arbitrary and illegal and without the authority of law.

3.At this stage of the hearing of the Writ Petition,Mr.P.H.Arvind Pandiyan, the learned Additional Advocate General appearing on behalf of the respondents, had submitted that the petitioner may be permitted to raise all the grounds available to it, as per law, including those which had been raised in the present writ petition, before the third respondent, while filing its reply to the impugned notice issued by the third respondent. Thereafter, it is for the third respondent to consider the same and pass appropriate orders thereon, on merits and in accordance with law. He had further submitted that till such orders are passed by the third respondent no action would be taken against the petitioner, by the respondents, for recovering the tax and penalty proposed, as per the impugned notice of the third respondent, dated 27.04.2012.

4. In view of the said submissions made by the learned Additional Advocate General appearing on behalf of the respondents, the petitioner is directed to file its objections, if any, to the impugned notice of the third respondent,dated 27.04.2012, raising all the issues available to it, as per law, including those which had been raised in the present writ petition, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the objections to be filed by the petitioner, the third respondent shall consider the same and pass appropriate orders thereon, on merits and in accordance with law, after giving an opportunity of personal hearing, to the petitioner, within a period of four weeks thereafter. However, it is made clear that no coercive steps would be taken by the respondents to collect the taxes and the penalty proposed by the impugned notice, issued by the third respondent, till final orders are passed by the third respondent, based on the said notice.

The Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

arr

To:

1.The Secretary to Government
State of Tamil Nadu,
Commercial Taxes and
Registration Department,
Fort St.George,
Chennai-600 009.

2.The Deputy Commissioner (CT),
Enforcement South,
Greams Road,
Chennai-600 006

3.The Assistant Commissioner (CT),
Tambaram-l Assessment Circle,
Chennai-600 045

+1CC to M/s.G.Sumitra, Advocate SR.57012

+1CC to The Special Government Pleader (Taxes) SR.57026

Writ Petition No.22683 of 2012

CKN(CO)
KSA(03/10/2012)