BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.13716 to 13718 of 2019 and
W.M.P.(MD)Nos.10264 to 10266 of 2019

Tvl.Punniamoorthy Pillai Department Stores,
Rep. by its Managing Partner,
No.1476, South Rampart,
Thanjavur - 613 001. ... Petitioner in all petitions

Vs.

The Assistant Commissioner(ST) (FAC),
Thanjavur II Assessment Circle,
II Floor, CT Building,
Sachidananda Moopanar Road,
Thanjavur - 613 001. ... Respondent in all petitions

Prayer in W.P.(MD)No.13716 of 2019: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order of re-assessment in TIN 33913820615/2012-13 dated 31.05.2019 from the files of the respondent herein and quash the same.

Prayer in W.P.(MD)No.13717 of 2019: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order of re-assessment in TIN 33913820615/2013-14 dated 31.05.2019 from the files of the respondent herein and quash the same.

Prayer in W.P.(MD)No.13718 of 2019 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order of re-assessment in TIN 33913820615/2014-15 dated 31.05.2019 from the files of the respondent herein and quash the same.

(in all W.Ps.)
For Petitioner : Ms.Aparna Nandakumar
For Respondent : Ms.J.Padmavathi Devi,
Special Government Pleader.

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner is a dealer registered with the respondent. The petitioner is running a departmental store in Thanjavur. The petitioner wanted to develop their premises. They entrusted the contract to one M/s.Periyasami Redivelu, Bangalore. The petitioner had paid the following amounts to the said works contractor during the following assessment years:-

S.NO.	ASSESSMENT YEAR	AMOUNT
1.	2012-2013	Rs.72,29,906/-
2.	2013-2014	Rs.1,14,08,533/-
3.	2014-2015	Rs.1,14,08,533/-

3. There is no dispute that the petitioner ought to have made deduction of tax at source while making payment to the said works contractor. The relevant provisions are Sections 13(1), Explanation (b) to Section 13(1) and Explanation to Section 6 of Tamil Nadu Value Added Tax Act, 2006. The said provisions read as under:-

" **13. Deduction of tax at source in works contract .--.**

(1) Notwithstanding anything contained in this Act, every person responsible for paying any sum to any dealer for execution of works contract shall, at the time of payment of such sum, deduct an amount calculated, at the following rate, namely:-

(i) Civil works contract:	Two per cent of the total amount payable to such dealer;
(ii) Civil maintenance works contract:	Two per cent of the total amount payable to such dealer;
(iii) All other works contracts:	[Five] per cent of the total amount payable to such dealers:

Provided that no deduction under sub-section (1) shall be made where --

(a) no transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract; or

(b) transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract in the course of inter-State trade or commerce or in the course of import; or

(c) the dealer produces a certificate in such form as may be prescribed from the assessing authority concerned that he has no liability to pay or has paid the tax under section 5;

Provided further that no such deduction shall be made under this Section, where the amount or the aggregate of the amount paid or credited or likely to be paid or credited, during the year, by such person to the dealer for execution of the works contract including civil works contract does not or is not likely to, exceed rupees one lakh."

"**Explanation (b) to Section 13(1)**
the term "civil works contract" shall have the same meaning as in the Explanation to Section 6. "
"**Explanation to Section 6-**
For the purpose of this section "**civil works contract**" includes 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 and any repair, maintenance, improvement or upgradation of such civil works by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall panelling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement on an existing structure"

4. The petitioner had taken the stand that only civil works contract has been awarded. This stand taken by the petitioner has nowhere been controverted by the respondent. In paragraph No.7 of the affidavits filed in support of these writ petitions, the petitioner had clearly stated that they had engaged in M/s.Periyasami Redivelu, Bangalore, as their interior decorators for renovation and execution of interior decoration work. Therefore, the award in the case on hand was only a civil works contract. In fact, Explanation to Section 6 of the Act would clearly indicate that the work of decoration would only amount to civil works contract. In any event, this stand taken in the affidavit filed in support of these writ petitions have not been controverted in the counter affidavit. In the impugned orders also, there is no denial of the said assertion.

5. Therefore, I have to necessarily come to the conclusion that the award by the petitioner was only a civil works contract. Yet there cannot be any dispute that the petitioner ought to have deducted the tax.

6. Now the question that arises for consideration is whether the rate of tax is 2% or 5%. In the case of civil works contract, the deduction of tax is 2%. But a mere simple calculation would show that the respondent had quantified the petitioner's liability by computing the rate of tax at 5% and not 2%. Therefore, on this sole ground, I must interfere. The orders

impugned in these writ petitions are set aside to the extent of levying the liability on the petitioner at 5%.

7. The respondent will issue revised proceedings quantifying the petitioner's tax liability at the rate of 2% and of course the petitioner has to pay the corresponding interest also. The petitioner's counsel states that when the petition was listed for admission, interim order was granted on condition that the petitioner shall pay 50% of the amount demanded. Whatever the amount the petitioner had paid in terms of interim order will be adjusted against the determination now to be made by the respondent in terms of the order passed by this Court.

8. These writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Assistant Commissioner(ST) (FAC),
Thanjavur II Assessment Circle,
II Floor, CT Building,
Sachidananda Moopanar Road,
Thanjavur - 613 001.

+1 CC to M/s.SPL GP (SR-6662[F] dated 23/02/2021)

+3 CC to M/s.APARNA NANDAKUMAR, Advocate (SR-6806[F] dated 24/02/2021)

W.P.(MD)Nos.13716 to 13718 of 2019
22.02.2021

PM(CO)
TR(05.05.2021) 4P 6C