IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Rev.Aplw No. 48 of 2023

M/s Orchid Designs Pvt Ltd.,
Rep. by its Director,.
No.3, Muthial Reddy Street,
Alandur, Chennai - 600 016. .. Petitioner

vs

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
Alandur Assessment Circle,
Alandur, Chennai - 600 016.

3.The Commercial Tax Officer,
Alandur Assessment Circle,
Alandur, Chennai - 600 016. .. Respondents

Petition filed under Order 47 Rule 1 and 2 of CPC against the order dated 07.08.2020 passed in W.P.No.32408 of 2019.

For Petitioner : Mr.C.Baktha Siromoni

For Respondents : Ms.E.Ranganayaki
Additional Government Pleader

ORDER

The petitioner states that a writ appeal has been filed as against order dated 07.08.2020 as against which the present review petition has been filed. In fact, the index to the typed-set only sets out the grounds of appeal and no ground for review is made out.

2. In the course of oral hearing, learned counsel would reiterate the stand already noted and dealt with under order dated 07.08.2020 on the applicability of majority judgment in the case of *Kone Elevator Pvt Ltd vs State of Tamil Nadu* 71 VST 1. After having considered all the points, I had at paragraph 13 relegated the petitioner to the appellate authority since the question of whether the transactions in issue constitute works contracts or sales would involve an examination of the contracts as well as various other factual particulars and such an exercise cannot be undertaken in writ jurisdiction.

3. That apart, though no ground has been raised, Mr.C.Baktha Siromoni, learned counsel for the petitioner would also refer to the judgment of Hon'ble Apex Court in the case of *Filterco and another v Commissioner of Sales Tax, MP and other* 61 STC 318. The argument of the petitioner is that there is a Circular of the Commissioner, Commercial Taxes Department, dated 06.08.2007 which is in favour of the petitioner and in light of the said circular, the matter ought not to have relegated to appeal.

4. Reliance on the aforesaid judgment is misconceived for the reason that, in that judgment, the proposition laid down was that a Circular issued by a superior authority would bind an assessing officer and in such circumstances, there is no point in remanding the matter to the file of the assessing authority to be re-done.

5. In the present case, the petitioner has been relegated to appeal which means that the matter will be heard by the appellate authority. That apart, and pertinently, as circular dated 06.08.2007, according to learned counsel, favours the petitioner, I see no difficulty on this score and the ratio of the judgment in *FilterCo (supra)* is inapplicable to the present case.

6. This review petition is dismissed. No costs.

11.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH,J.

ssm

To:

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
Alandur Assessment Circle,
Alandur, Chennai - 600 016.

3.The Commercial Tax Officer,
Alandur Assessment Circle,
Alandur, Chennai - 600 016.

Rev.Aplw.No.48 of 2023

11.04.2023