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W.P.No.16965 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16965 of 2024
and W.M.P.Nos.18681 & 18683 of 2024

Tvl.DBL Villuppuram Highways Limited
No.30, Throwpathi Amman Street
Pudukkadaai, Singirikkudi,
Cuddalore - 607 001
Through its Authorized Representative,
Mr.Romanand Kumar Gali

... Petitioner

-vs-

- 1.Union of India
Through the Secretary Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.
- 2.State of Tamil Nadu,
Through the Secretary Ministry of Finance
Department of Revenue, Fort St. George
Chennai 600 009.
- 3.The State Tax Officer, Group VI, Cuddalore,
No.1, Vallalar Nagar, Manjakuppam,
Cuddalore - 607 001.



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4.The Joint Commissioner (ST), (Intelligence),
Cuddalore, No.1, Vallalar Nagar,
Manjakuppam, Cuddalore - 607 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records pertaining to the Impugned order bearing reference No. 33AAICD4195L1ZB/2022-2023 dated 28.02.2024 issued by the Respondent No.3 and to quash the same as illegal.

For Petitioner : Mr.Bharat Raichandhani
for Mr.Varun Pandian

For Respondents : Mr.V.Prasanth Kiran, GA (T)
2 to 4

For Respondent 1 : Mr.Ramesh Kutty, Sr. SC

ORDER

The petitioner was awarded a concession by the National Highways Authority of India on Hybrid Annuity Model (HAM). The



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petitioner, in turn, had awarded EPC contracts. In relation to supplies made by the petitioner, an intimation was issued in November 2023. The petitioner replied thereto in December 2023. This was followed by a show cause notice issued in December 2023. By such show cause notice, the petitioner was called upon to show cause in respect of defects pertaining to the value of supplies made by the EPC contractor in comparison to the outward supply values indicated by the petitioner. The petitioner replied to such show cause notice in January and February 2024. The impugned order was issued thereafter on 28.02.2024.

2. Learned counsel for the petitioner submits that a contract awarded on HAM cannot be equated with an EPC contract. He submits that the obligations of the petitioner extend not only to designing, building and transferring, but also to operation and maintenance. Therefore, he submits that there is continuous supply of services and that liability cannot be imposed on the petitioner on



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the basis of the supply value indicated by the EPC contractor. He relies upon Circular No.221/15/2024-GST dated 26.06.2024 (Circular No.221/24). By pointing out that the said Circular was issued by the Central Board of Indirect taxes and Customs (CBIC) pursuant to representations from concessionaires, such as the petitioner, he submits that the matter requires re-consideration in light of such Circular.

3. Mr.V.Prashanth Kiran, learned Government Advocate, appears on behalf of the second to fourth respondents. Mr.Ramesh Kutty, learned senior standing counsel, appears on behalf of the first respondent. Mr.V.Prashanth Kiran contends that the time of supply is the time of provision of services under Section 31 and other applicable provisions of GST statutes. When the EPC contractor has indicated a higher value of outward supply, he submits that it constitutes clear evidence that construction was completed to that extent. Without prejudice, he submits that the matter may require re-



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consideration in light of Circular No.221/2024.

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4. Circular No.221/2024 was placed on record. Such circular was issued in exercise of powers conferred under Section 158(1) of the Central Goods and Services Tax Act, 2017 (the CGST Act). The Circular is clarificatory. In the Circular, the CBIC noticed that a HAM contract is a single contract for construction and operation and maintenance. The Circular also draws reference to sub-section (5) of Section 31 of the CGST Act which deals with continuous supply of service. On closely examining the Circular, especially in view of such circular being labelled and characterized as clarificatory, it could have a bearing on the adjudication of this dispute. Consequently, the matters requires re-consideration.

5. For reasons set out above, impugned order dated 28.02.2024 is set aside and the matter is remanded for re-consideration. The third respondent is directed to provide a reasonable opportunity to



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the petitioner, including a personal hearing, and thereafter issue a fresh order by taking into account Circular No.221/2024. Such fresh order shall be issued within *four months* from the date of receipt of a copy of this order. In view of the assessment order being set aside, the bank attachment is raised.

6. W.P.No.16965 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18681 and 18683 of 2024 are closed.

23.07.2024
(4/6)

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

1.The Secretary Department of Revenue,
Ministry of Finance, North Block,
New Delhi – 110 001.

2.The Secretary Ministry of Finance

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Department of Revenue, Fort St. George
Chennai 600 009.

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