

W.P.Nos.6431, 6434, 6458, 6463, 6465, 6495, 6500,
6502, 6503 & 6507 of 2020 & 2708 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

**W.P.Nos.6431, 6434, 6458, 6463, 6465, 6495, 6500,
6502, 6503 & 6507 of 2020 & 2708 of 2023 and
WMP.Nos.7600, 7601, 7604, 7606, 7631, 7635, 7637,
7640, 7643, 7645, 7702, 7703, 7712, 7718, 7719, 7721,
7723, 7725 & 7726 of 2020 and 2809 & 2810 of 2023**

WP.No.6431 of 2020

M/s.Avigna Properties Pvt. Ltd.,
rep. by its Managing Director
S.Rajasekaran,
Plot No.1822, 3rd Floor, I Block,
13th Main Road, Anna Nagar West,
Chennai-600 040

... Petitioner

Vs

State Tax Officer,
Group VIII, Inspection-I,
Chennai Intelligence-I,
F-18, First Floor,
No.1, Greams Road,
Chennai-600 006.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the records of
the Order bearing Order No.GST/INS-01/9/2019-2020-I dated 07.11.2019 by
the Respondent and quash the same with consequential direction to the



Respondent to redo the assessment in exclusion of value of registered sale deed pertaining to land or undivided share in land to arrive at total value in respect of Tamil Nadu Goods and Service Tax Act, 2017 and Central Goods and Service Tax, 2017 and providing Input Tax credit to pass in the circumstances of the case.

(In all WPs)

For Petitioner : Mr.T.K.Venkataraman

For Respondents : Mr.C.Harsha Raj

Additional Government Pleader

COMMON ORDER

This batch of ten writ petitions has been filed by a Company which is engaged in property development. It is a regular assessee under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017, (in short, 'Act').

2. The business of the Company relates to supply of construction services as well as works contract relating to immovable property. It had launched a residential township project called 'Avigna Properties' in Mahindra World City

3. In respect of periods 2017 to March, 2019, (period in question), show-cause notices were issued to the petitioner outlining various points identified by the assessing authority as necessitated discussion and finalization.

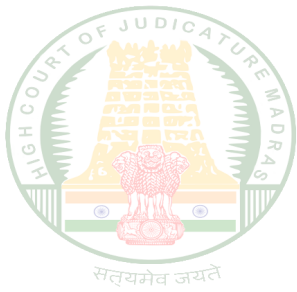


One of the issues, in common, related to alleged short payment of output tax qua supply of construction services.

4. The assessing authority refers to paragraph 2 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017. According to him, in the case of supply of construction services involving the transfer of property in land or undivided interest in land, as the case may be, the value of supply services and goods shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be. The value of land or undivided share of land shall, in such circumstances be deemed to be the development charges.

5. He refers to the Explanation contained in paragraph 2 of the aforesaid Notification wherein 'total amount' has been defined to mean the sum payable to consider the charge for services as well as transfer of land or undivided share of land. In conclusion, he directs the assessee to show-cause why output tax to the extent of the differential tax liability as per aforesaid Notification not be imposed along with interest under Section 50(1) and applicable penalty. The petitioner responds to the show-cause notice as follows:-

Date : 26th October, 2019
To



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*The State Tax Officer,
Group VIII, Inspection Cell,
Inspection Unit, Intelligence - I,
Chennai - 600 006.*

Respected Sir,

Sub: Reply to show cause notice - Reg.

*Ref: INS-01/9/2019-20-I (2017-18) dated the 15th
October, 2019*

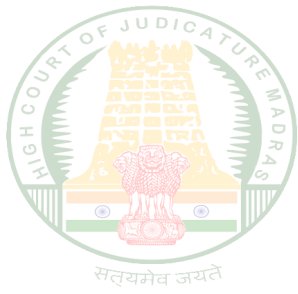
*With reference to the above subject please find below are
the points against show cause notice;*

*A) Short payment of output tax on the supply of
construction services.*

*It is submitted that levy of GST on the sale value of land
under the proportionate of 70 : 30 is unlawful and
illegal. It is further submitted stamp duty Act prescribed
and levy on the sale value as per the Guidelines value of
registration department. In this regard registration
department is authority to levy stamp duty on the sale
value of land. It is therefore submitted levy of GST on the
proportionate of 70:30 of the total value of construction
is unlawful. It is stated that we have mentioned actual
sale consideration of land and paid necessary stamp duty
under the provisions of stamp duty act. Therefore it is
submitted that levy of GST as proposed by you is illegal
and double levy (ie) GST to be levied as per 70:30
proportionate double time levy. One is Stamp duty for the
same value, another is GST. This is totally against the
provision of law of GST. Therefore please drop your
proposal and request you to accept actual mentioning of
land value in audited statement which is real and correct.*

*B) Claim of ineligible ITC not reflected in auto-populated
statement of monthly inward receipts in form GSTR2A;*

*(i) Based on the invoices received from the registered we
have taken ITC in the respective month but some of the
vendor have not filed the GSTR1.*



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(ii) We are consistently following the suppliers to file the GSTR1 to get ITC and also the reason for month wise reconciliation difference is because some of the suppliers are being filed in quarterly.

C) ITC ineligibility on account of non-payment of consideration for supplies received within 180 days of date of supply;

We agree the payment paid to few suppliers beyond 180 days from the date of invoice, we will pay the interest as per annexure.

Thanks & Regards

Yours faithfully,

For Avigna Properties Private Limited

Sd/-

6. This is the common stand adopted by the petitioner in all the orders in question. The petitioner was also heard and in the case of hearing submitted that the transaction of sale of land, on the one hand, and supply of construction services on the other, were independent of each other and required to be construed as a single transaction of supply of residential housing units. In support of the submission, they produced formats of sample sale and construction agreements, illustrating the manner in which liability must be reckoned.

7. The assessing authority concludes that the Notification does not permit distinguishing of sale of land and supply of construction services and in cases of composite construction, a 70:30 formula is liable to be adopted. The



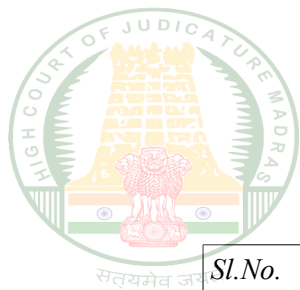
payment of stamp duty, according to him, is of no relevance in such

circumstances. The operative portion of the impugned order reads as follows:-

"(ix) The notification aforesaid itself does not permit the distinguishing of sale of land and supply of construction services in such cases as provides for levy of tax on the 2/3rd value of the total amount charged and the ambit of the 'total amount' is specifically shown in the explanation thereunder as stated in sub-para (i). The principal objection of the taxable person that an amount charged to stamp duty cannot be charged to tax under GST once again is also misplaced. The notification aforesaid provides for the manner in which the turnover of the taxable person in relation to such supplies has to be computed. It fixes the same at 2/3rd of the total amount charged. This may sometimes be less than the cost of supply of construction service and sometimes more. But the notification does not provide for any leeway in such determination and prescribes a fixed proportion of the total amount charged for purpose of assessment to tax. The payment of stamp duty or otherwise is of no relevance here."

8. I am of the considered view that the Notification dated 28.06.2017 would be applicable only in cases where the assessee is unable to supply the bifurcation of the construction as relatable to construction services or sale of land. The operative portion of the Notification is extracted below:-

Sl.No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Conditions
(1)	(2)	(3)	(4)	(5)
3	Heading 9954	(i) Construction of a complex, building, civil	9	-



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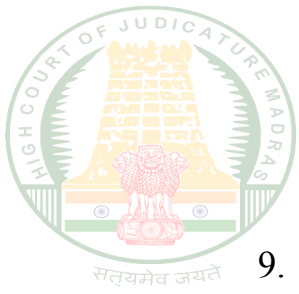
Sl.No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Conditions
	(Construction services)	structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above		

.....

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no.3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the purposes of paragraph 2, "total amount" means the sum of total of,

(a) consideration charged for aforesaid service; and
(b) amount charged for transfer of land or undivided share of land, as the case may be."



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9. The methodology set out under the Notification as relatable to construction services, is for bifurcation of the total consideration by way of a deeming fiction, to arrive at the deemed amount attributable to construction services and land costs. The deeming fiction would not apply in cases where the assessee is in a position to supply the actual amount of the consideration received towards construction services and land cost.

10. In the present case, it is its consistent stand that such evidences are available with it, though, as learned Standing Counsel points out, such particulars do not appear to have been actually produced before the authority. The officer could well have sought such particulars instead of proceeding on the basis that the Notification would be applicable in all cases of property development as he has done.

11. Needless to say, in an event where the officer is of the view that the attribution adopted by an assessee is unsupported by hard evidences or the documents produced do not satisfies him that the attribution has been made in an appropriate manner commensurate with business practices and costs in that particular area, he is alway at liberty to seek more particulars or to apply the deeming fiction as per the Notification, rejecting the attribution made by the



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assessee. He may not however proceed on the basis that the formula as per
deeming fiction is the only method of assessment in such cases.

12. In light of the discussion as aforesaid and being of the unambiguous view that the position taken by the authority on merits is not the correct view, assessments impugned in WP.Nos.6431 and 6434 of 2020 are set aside. As far as the assessments in the other writ petitions are concerned, they have all been made under Section 62 of the Act on the ground that the petitioner was a non-filer. There is nothing untoward in this insofar as admittedly at the time the assessments were made, the petitioner had not filed returns of income.

13. However, pending writ petitions, returns have been filed by the petitioners and my attention is thus drawn to Notification No.6 of 2023 dated 31.03.2023, which is a beneficial notification providing that if returns were filed on or before 30.06.2023, orders of assessment passed under Section 62(1) shall be deemed to have been withdrawn. Thus orders impugned in W.P.Nos.6458, 6463, 6465, 6495, 6500, 6502, 6503 & 6507 of 2020 stand withdrawn and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.



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14. Let the petitioner appear before the respondent on 05.05.2023 at 10.30 a.m. with all records in support of its turnover. After hearing the petitioner and considering materials, if any submitted by it, orders of assessment shall be passed denovo within a period of four (4) weeks from 05.05.2023 i.e. on or before 05.06.2023, for all periods in question, and in accordance with law.

24.04.2023

ssm/vs

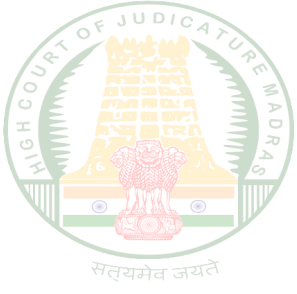
Index : Yes

Speaking Order

Neutral Citation: Yes

To

State Tax Officer,
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Dr.ANITA SUMANTH,J.

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