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W.P.No.30256 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30256 of 2023
and
W.M.P.No.29857 of 2023

M/s.Indiabulls Construction Limited,
Rep by its Authorised Signatory,
S.N.68/1A, Jallandiapet Joint Road,
Perambalur,
Tamil Nadu 601 302.

... Petitioner

Vs.

1.The Assistant Commissioner (ST)
Medavakkam Assessment Circle,
#232 Second Floor,
Integrated Building of Commercial Taxes,
and Registration Department,
Chennai 600 035.

2.The Assistant Commissioner (ST)
Velachery Assessment Circle,
Greenways Road,
Chennai 600 028.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India



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praying to issue a Writ of Certiorari, to call for the records of the impugned show cause notice in Ref.No.ZD330923261146J dated 29.09.2023 along with summary of show cause notice in DRCO1 dated 29.09.2023 for financial year 2017-2018 from the files of the first respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

This writ petition has been filed challenging the show cause notice dated 29.09.2023.

2. Mr.T.N.C.Kaushik, learned Additional Government Pleader, takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The case of the petitioner is that in the Pre-GST era, the

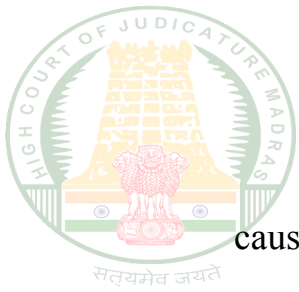


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petitioner are entitled for TDS for a sum of Rs.1,13,18,411/- and as per the Tamil Nadu Goods and Services Act, they are entitled to transfer and utilise the same in the form of Input Tax Credit (ITC). In this regard, the second respondent had already issued a show cause notice in the year 2019 and a reply was also filed. However, no order has been passed so far.

5. At this juncture, the jurisdiction was shifted to the first respondent and when the first respondent assumed the jurisdiction, he had also issued the show cause notice on 03.03.2020 for the same issue and a reply was filed on 05.09.2022. Further, the petitioner had also appeared personally to present his case. However, no order was passed till date. Under these circumstances, once again the present show cause notice came to be issued on 29.09.2023, whereby the respondent had permitted the petitioner to convert the ITC only to an extent of a sum of Rs.2,62,244/- under the Tamil Nadu Value Added Tax Act and further, denied to transfer TDS to an extent of a sum of Rs.1,10,56,167/-. Hence, this writ petition came to be filed challenging the said impugned show



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cause notice.

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6. The learned counsel for the petitioner would submit that the present issue is with regard to the transfer of TDS from Pre-GST era to Post-GST era has been settled by virtue of an order passed by this Court in a batch of writ petition in ***DMR constructions vs The Assistant Commissioner, Commercial Tax Department*** [W.P.Nos.9991 of 2020, etc.,] vide order dated 26.02.2021, wherein, it has been categorically held that the Assessee is entitled for transfer of TDS from Pre-GST era to Post-GST era. The relevant portion of the said order is extracted hereunder:

“31. Section 140 of the Act talks of carrying forward of the credit of 'VAT' and Entry Tax under the existing law, defined under Section 2(48) of the TNGST Act to mean any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services made prior to the commencement of the TNGST. Since the amount collected/deducted has been captured in the returns of turnover filed under the erstwhile TNVAT regime, I accept the stand of the petitioners to the effect that such amounts would stand included for the purposes of transition under Section



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32. My conclusion also finds support from the language of Section 20 of the TNVAT Act dealing with assessment of tax, as per which, tax under that 24 Act was to be assessed, levied or collected in the manner prescribed, bringing within the ambit of assessment, collection by way of deduction under Section 13 of that Act.

33. In *Magma Fincorp Ltd. V. State of Telangana* (2019 (26 GSTL 7) the High Court at Telangana has considered this very issue, interpreting Section 140 purposively stating that 'Once it is admitted that credit was available to the petitioner on the date of switch over from VAT regime to GST regime and once it is admitted that the petitioner may be entitled to make a claim for this credit in other modes, we think that the second respondent ought to have given a purposive interpretation to Section 140 of the Act read with Sections 16 to 21 of the Telangana GST Act 2017. As he has failed to do the same, the matter requires reconsideration'. Section 140 of the Telangana Goods and Service Tax Act, 2017 is in pari materia with the same provision in the TNGST and the observations of the Telangana High Court would also support the view I



have now taken.

34. A detailed circular has been issued on tax deduction at source (Circular No.54 of 2014 bearing Ref.No.D3/34075/2011) wherein the Principal Secretary/Commissioner of Commercial Taxes Dated 14.11.2014 has issued guidelines on the subject of taxability of works contracts, including the aspects of assessment and TDS. The relevant portions of the Circular are extracted below:

“ (H) Value of the goods for the purpose of making assessment on works contract:

In order to determine the assessable value of the goods, it is permissible to take the entire value of the works contract as the basis and the value of the goods involved in the execution or the works contract can be arrived at by deducting the following amounts from the value of the works contract:-

(1) All amounts involved in respect of goods involved in the execution of works contract,

i. In the course of export of the goods out of the territory of India or

ii. In the course of import of the goods into the territory of India or,

iii. In the course of inter-state trade or commerce

Rule 8 (5)(a)

(2) Goods involved in the execution of



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works contract which are specifically exempted from tax

Rule 8 (5)(b)

(3) All amounts paid to the Sub-contractors: Condition: - The Sub-contractor must be a registered dealer under VAT Act, 2006. He must be liable to pay tax under this Act. The turnover of such amount is included in the return filed by him.

Rule 8 (5)(c)

Unless the genuineness of payments made to sub-contractor is ensured by supporting documents such as bank statements, etc, exemption could not be granted. Even if there is any difference in turnover, which shall be brought under assessment at higher rate of tax.

(4) All amounts towards labour charge and other charges not including any transfer of property in goods, actually incurred in connection with the execution of works contract;

(5) If the charges are not ascertainable from accounts maintained and produced by a contractor before the assessing authority, deduction is allowable at the following rates given below: -”

35. In Seaford Court Estates Ltd. V. Asher ((1949) 2 ALL ER 155), the Kings Bench speaks eloquently about the language to be employed in interpreting a provision stating:

“The question for decision in this case is whether we are at liberty to extend the



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ordinary meaning of “burden” so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ld. v. Miller 17); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give “force and life” to the intention of



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the legislature. That was clearly laid down by the resolution of the judges in Heydon's case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume Eyston v. Studd. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

36. In the light of the detailed discussion as above, the impugned orders are set aside, and the petitioners held to be entitled to transition TDS under the TNVAT Act in terms of Section 140 of the TNGST 2017. Allowed. Connected Miscellaneous Petitions are closed with no order as to costs."

7. In view of the above, this Court feels that issuing the impugned show cause notice by denying the transfer of TDS from the pre-GST era to post-GST era is illegal and the same is contrary to the law laid down by this Court.



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8. The learned counsel for the respondent had also accepted the law laid down by this Court in the aforesaid order. Therefore, he would submit that an appropriate order may be passed.

9. Under these circumstances, this Court is inclined to quash the impugned show cause notice dated 29.09.2023 and accordingly, the said show cause notice is quashed.

10. In the result, this writ petition is allowed. Consequently the connected miscellaneous petition is also closed.

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Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Note: Issue order copy on 18.10.2023.



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KRISHNAN RAMASAMY.J.,
nsa

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