IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.22104 of 2018
and
WMP.No.25903 of 2018

M.Elangovan ..Petitioner

vs.

1.The Assistant Commercial Tax Officer (SD)
Commercial Taxes Department
Government of Puducherry
Karaikal, Puducherry.

2.The Chief Engineer
Public Works Department
Puducherry.

3.The Executive Engineer (Planning)
Central Office
Public Works Department
Government of Puducherry
Puducherry.

4.The Executive Engineer
Building and Roads Division
Public Works Department
Karaikal, Puducherry. ..Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the show cause notice in GSTIN:34AAAPE3762B1ZF/212 dated 26.06.2018 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.S.Doraisamy
For Respondents: Mr.J.Kumaran
Government Advocate (P)

ORDER

Mr.J.Kumaran, learned Government Advocate (P) takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the proceedings dated 26.06.2018, which is nothing but a show cause notice, wherein and whereby, the petitioner was called upon to show cause as to why the proposal should not be confirmed and tax and penalty should not be levied.

3. Mr.S.Doraisamy, learned counsel for the petitioner submitted that as per the Circular dated 13.03.2018 issued by the Public Works Department, Government of Puducherry, GST is not payable and only VAT is applicable in respect of payment made to the Contractor for the work done and invoice raised before 01.07.2017. Therefore, he submitted that the present show cause notice proposing to impose tax and penalty under the Goods and Services Tax Act, 2017, in respect of the work done already by the petitioner during the period 2015 is not sustainable. Therefore, he contended that the show cause notice is liable to be set aside.

4. On the other hand, the learned Government Advocate (P) submitted that the impugned proceedings is only a show cause notice and therefore, the writ petition is not maintainable. He further contended that the petitioner has already given a reply on 04.07.2018 and therefore, the said reply will be considered and appropriate orders will be passed on merits and in accordance with law.

5. Heard both sides.

6. The challenge made in this writ petition is against the show cause notice.

7. The learned counsel for the petitioner contended that the petitioner is not liable to pay tax under the GST, as he has already paid the Value Added Tax in respect of the transaction, which took place, much prior to the introduction of GST. In support of such contention, the learned counsel relied on the Circular dated 13.03.2018 issued by the Public Works Department, Government of Puducherry.

8. Needless to say that the petitioner is entitled to raise all the objections, by way of his reply to the show cause notice and dispute the proposal. In fact, the petitioner has made such objections on 04.07.2018. When such being the position, it is for the concerned Official to pass appropriate orders on the objections raised by the petitioner on merits and in accordance with law, taking note of the materials placed by the petitioner, including the reliance placed on the Circular dated 13.03.2018. It is to be stated at this juncture, that any view expressed in the show cause notice is only prima facie and therefore, the petitioner is not correct in contending that the authority, who

issued the show cause notice, has pre-determined the issue. It is always open to the authority to change his view, after considering the objections filed in response to the show cause notice. Accordingly, I find that the present writ petition is highly pre-matured and not maintainable, since the same is filed against the show cause notice. Therefore, without expressing any view on the rival contentions raised by the parties, this writ petition is disposed of, only by directing the first respondent to pass final orders on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the first respondent, within a period of four weeks from the date of receipt of a copy of this order. Till the final order is passed as stated supra, no coercive steps shall be taken against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To
1.The Assistant Commercial Tax Officer (SD)
Commercial Taxes Department
Government of Puducherry
Karaikal, Puducherry.
2.The Chief Engineer
Public Works Department,Puducherry.
3.The Executive Engineer (Planning)
Central Office Public Works Department
Government of Puducherry,Puducherry.
4.The Executive Engineer
Building and Roads Division
Public Works Department
Karaikal, Puducherry.

+ 1 cc to Mr.S.Doraisamy, Advocate Sr.59169
+ 1 cc to Mr. Government Pleader Sr.58988

W.P.No.22104 of 2018

(CS-IX)
EU(07/09/2018)