**(2007) 09 MAD CK 0076**

**In the Madras High Court**

**Case No :** Writ Petition No. 25676 of 2007

RPP Construction Pvt. Ltd. — APPELLANT

Vs

Commissioner of Central Excise and Service Tax, The Assistant Commissioner of Central Excise and The Superintendent of Central Excise, Range 81 — RESPONDENT

**Date of Decision :** 17-09-2007

**Acts Referred:**
Finance Act, 1994 — Section 65(105), 66, 73

**Citation :** (2008) 9 STR 122

**Hon'ble Judges :** M. Jaichandren, J

**Bench :** Single Bench

**Advocate :** Arvind P. Datar, for C. Saravanan, for the Appellant; P. Wilson, Additional Government Pleader, for the Respondent

## Judgement

M. Jaichandren, J.—Heard Mr. Arvind P. Datar, the learned Counsel appearing for the petitioner and Mr. P. Wilson, the learned Assistant

Solicitor General, appearing for the respondents.

2. It is stated that the writ petition has been filed for a writ of Certiorarified Mandamus to quash the letter, dated 08.03.2007, bearing reference

O.C. No. 151/2007, issued by the 3rd respondent demanding service tax of Rs.1,85,47,826/-, u/s 66 read with Section 65(105)(zzq) of the

Finance Act, 1994, on the contracts involving works contract as construction services without issuing proper show cause notice u/s 73 of the

Finance Act, 1994, for the period between 10.09.2004 to 28.02.2007 and to direct the respondents to refund the sum of Rs.11,40,833/- already

collected as service tax and to pass such further orders.

3. The writ petition has been filed by the petitioner challenging the impugned

letter of the third respondent, dated 08.03.2007, raising various

grounds as stated therein. The main contention raised on behalf of the petitioner is that the respondents have no authority of law to demand service

tax by way of a demand letter. The impugned letter, dated 08.03.2007, has been issued by the third respondent without the petitioner having been

given an opportunity of representing its case as there was no show cause notice or proceedings initiated by the respondent so far. However, the

respondents have insisted that the petitioner ought to pay the service tax on construction activity involving works contract.

4. In the counter affidavit filed on behalf of the respondents, the contentions raised on behalf of the petitioner have been denied. It has been stated

by Mr. P. Wilson, the learned Assistant Solicitor General, appearing for the respondents that the third respondent had advised the petitioner by the

impugned letter, dated 08.03.2007, to remit the service tax to the government account. The said letter is only advisory in nature and not a demand

letter as contended by the petitioner. The said letter has been issued only to appraise the petitioner with regard to its service tax liability and it is not

a demand order. Therefore, there is no cause of action for the petitioner to file the present writ petition.

5. Mr. P. Wilson, the learned Assistant Solicitor General, appearing for the respondents had also submitted that the respondents would strictly

follow the due procedure established by law, if and when they seek to demand payment of service tax from the petitioner. Since the impugned

letter issued by the third respondent, dated 08.03.2007, is only advisory in nature, the present writ petition filed by the petitioner is premature in

nature and liable to be dismissed in limine without going into the merits of the case.

6. On such submissions being made by the learned Counsels appearing on behalf of the parties concerned, this Court is of the considered view that

the present writ petition filed on behalf of the petitioner is pre-mature in nature and therefore, it cannot be held as maintainable at this stage.

However, it would be open to the petitioner to challenge the appropriate proceedings of the respondents, in accordance with law, as and when

they are issued.

With the above observations, this writ petition is disposed of. No costs.

 

Consequently, connected MP is closed.

 