In the High Court of Judicature at Madras

Dated : 18.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Writ Appeal Nos.917 to 920 and 932 to 936 of 2015
and all connected pending MPs

Tvl.Ramalingam Engineering Works
rep.by its Proprietor V.Ramalingam ...Appellant/Petitioner in all the appeals

Vs

The Assistant Commissioner (CT),
Tambaram Assessment Circle,
Chennai-45. ...Respondent/Respondent in all the appeals

APPEALS under Clause 15 of the Letters Patent against the common order dated 31.3.2015 made respectively in W.P.Nos.9367, 9459 to 9461 of 2015 as well as the common order dated 1.4.2015 made respectively in W.P. Nos.9535 and 9569 to 9572 of 2015.

Petitions filed U/a.226 of the constitution of India to issue a writ of certiorari to call for the records on the files of the respondent proceedings in TIN/0886059/2006-07,RCNo.2010/2014/A4/2005-06, R.C.No.2010/2014/A4/2004-05 respectively dated 28.1.2015 and quash the same being illegal invalid without authority of law and violated the Principles of natural Justice and also law laid down by this Hon'ble Court, (WP.Nos.9367, 9459 to 9461/2015) and

R.C.2010/2014/A4/2006-07
TIN/33320886059/2009-10
TIN/3320886059/2006-07
TIN/3320886059/2008-09
TIN/3320886059/2007-08

respectovely dt.28.1.2015 and quash the same being illegal invalid without authority of law and violated the Principles of natural Justice and also law laid down by this Hon'ble Court (w.P.Nos.9535 and 9569 to 9572/15)

For Appellant : Mr.D.Vijayakumar
For Respondent : Mr.A.N.R.Jayapratap, GA (Taxes)

COMMON JUDGMENT
(Judgment was delivered by V.RAMASUBRAMANIAN,J

The appellant has come up with the above appeals against two sets of orders passed by the learned Single Judge, one on 31.3.2015 and another on 1.4.2015, setting aside the orders of assessment and remitting the matters back for a fresh disposal, however, upon condition that the appellant shall pay 5% of the tax demanded.

2. Heard Mr.D.Vijayakumar, learned counsel for the appellant. Mr.A.N.R.Jayapratap, learned Government Advocate (Taxes) takes notice for the respondent.

3. The appellant is not and actually cannot be aggrieved by the substantial portion of the orders of the learned Judge, as he actually succeeded before the learned Judge. The only area of dispute is as to whether the appellant could have been directed by the learned Judge to pay 5% of the tax demanded, as a pre-condition or not.

4. But, it is seen from paragraph 7 of the order passed by the learned Judge both on 31.3.2015 and on 1.4.2015 that the learned Judge was induced to give a direction only in accordance with the offer made by the learned counsel for the appellant. Paragraph 7 of the order of the learned Judge reads as follows:

> "The respondent is directed to accept 5% of the amount demanded in the impugned orders for each of the assessment years, which the petitioner has agreed to pay the same on or before 30.4.2015. On receipt of the said amount, the respondent is directed to consider the case of the petitioner afresh and pass appropriate orders on merits and in accordance with law, after furnishing the details about D7 records, by giving break-up details as mentioned supra."

5. However, Mr.D.Vijayakumar, learned counsel for the appellant contends that the appellant never agreed to make payment. In any case, the learned counsel invites our attention to the decisions of two Division Benches of this Court, one of which was dated 6.3.2015 passed in W.A.Nos.211 to 218 of 2015. In that case, a Division Bench set aside the similar order passed by the learned Judge despite the fact that it was recorded by the learned Single Judge that the appellant had volunteered to make payment of 5% tax amount.

6. At the outset, it should be pointed out that in law, whenever an order is set aside, the question of directing the assessee to make a deposit does not arise. But, once a person agrees to make payment and that is recorded by the learned Judge, the assessee is not entitled, thereafter, to turn around and become alive to the law on the point. The question as to whether the assessee gave consent

before the learned Judge or not, cannot be gone into in an appeal. If a statement recorded by a learned Judge on the basis of a purported submission or consent made by the learned counsel for the assessee is disputed, the remedy is not really to file an appeal, but only to go before the very same learned Judge. Therefore, we find no merits in the writ appeals.

7. Accordingly, the writ appeals are dismissed. No costs. Consequently, all connected pending MPs are also dismissed.

Sd/-
Assistant Registrar(CS III)
dt. 18.09.2015

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT),
Tambaram Assessment Circle,Chennai-45.

+ 1 cc to Mr.D. Vijayakumar, Advocate SR.43340
+ 2 ccs to Special Government Pleader SR.43980, 43979

W.A.Nos.917 to 920 & 932 to 936/2015 & all connected pending MPs

PUR(CO)
Eu 21.09.15