IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. NOs. 10356 and 10357 of 2015
and
M.P. Nos. 1 and 1 of 2015

M/s.G.K.Roofings India Private Ltd.,
Rep by its Director K.Parthiban ..Petitioner in both WPs

-vs-

1 The Assistant Commissioner (CT)
Nanganallur Assessment Circle No.30
4th Floor Medavakkam Main Road
Madipakkam, Chennai 91

2 The Deputy Commissioner
(CT)(South) Enforcement
PAPJM Buildings
Greams Road Chennai 6

3 The Joint Commissioner
Enforcement II PAPJM Buildings
Greams Road
Chennai 6 .. Respondents in both WPs

PRAYER in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in TIN. No.33320984708/2007-08 & 33320984708/2008-09, quash the impugned orders dt 1.4.2015 in so far as it relates to the levy of Sales Tax at 12.5% on the turnover of Rs.7,38,45,800/- & Rs.8,56,66,675/- respectively and further direct the 1st respondent to levy tax at 4% in view of Authority For Clarification and Advance Ruling in A.C.A.R.R.No.8/2013-14 dt. 5.6.2013 and A.C.A.R.R. No.7/2013-14 dt 5.6.2013 issued under section 48A of the Tamil Nadu Value Added Tax 2006 and pass further orders.

For petitioner in both WPs : Mr. V. Sundareswaran

For respondents in both WPs : Mr. S. Kanmani Annamalai, AGP

COMMON ORDER

By consent of both parties, these writ petitions are disposed of, at the stage of admission itself.

2. There are two writ petitions filed by M/s. G.K. Roofings India Private Limited, represented by its Director Mr. K. Parthiban seeking to quash the impugned orders of the Assistant Commissioner (CT), the 1st respondent herein, in TIN. Nos. 33320984708/2007-08 & 33320984708/2008-09 dt 1.4.2015 in so far as it relates to the levy of Sales Tax at 12.5% on the turnover of Rs.7,38,45,800/- & Rs.8,56,66,675/- respectively and further direct the 1st respondent to levy tax at 4% in view of Authority For Clarification and Advance Ruling in A.C.A.R.R.No.8/2013-14 dt. 5.6.2013 and A.C.A.R.R. No.7/2013-14 dt 5.6.2013 issued under section 48A of the Tamil Nadu Value Added Tax 2006.

2. Learned counsel appearing for the petitioner would submit that the first respondent had failed to see that when the petitioner's case is supported by Clarification issued by Advance Ruling, the same is statutorily binding on them, instead of looking into the D-3 report, which is non-statutory in nature. That approach indicates that the first respondent had abdicated his quasi-judicial functions, on the instructions of the 2nd and 3rd respondent in view of the D-3 report, directing the first respondent to pass orders ignoring the Advance Ruling and clarification which is statutorily binding. Secondly, in as much as the Advance ruling is issued in 2013, it is a beneficial circular and is binding upon the respondents, hence, the same is applicable to the facts of the present case. But it is completely overlooked by the respondent. That apart, when the petitioner was availing cenvat credit only on HR coils, CR coils, Channel, MS Angle, Square round tubes, Anchor bolt, Nut and not otherwise, the first respondent ought not to have failed to see that the sale invoices of the seller of the goods as well as the sale invoices of the petitioner only charges VAT at 4% and not as alleged by the respondents. In any event, such reasoning was not proposed either in the Notice dated 11.03.2013 or 13.12.2013 by the erstwhile Assistant Commissioner, Velachery Assessment circle, that apart, as between the statutory provisions and departmental instructions, always the statutory provisions shall prevail over the departmental instructions. Above all, the 1st respondent failed to grant an opportunity before enhancing the turn over from Rs.6,32,89,746/- to Rs. 7,38,45,800/- without notice to the

petitioner.

3. Heard Mr. V. Sundareswaran, learned counsel appearing for the petitioner and Mr. S. Kanmani Annamalai, learned Additional Government Pleader for the respondents.

4. The case of the respondent, that the goods, namely, roof cladding and steel sheets, are taxable at 12.5% / 14.5%, as they are classifiable under the residual entry, was denied by the petitioner. It is at this point of time, the Enforcement Wing Officials prepared inspection report and forwarded the same to the second respondent, who, on perusal of the said report, prepared D-3 report and again forwarded the same to the Assistant Commissioner, Velachery Assessment Circle, who was the erstwhile Assessing Officer of the petitioner, for implementation. Subsequently, the said official, on receipt of D-3 report, issued a show cause notice dated 11.03.2013 to the petitioner calling for objections. On receipt of the notice, the petitioner filed their objections on 13.05.2013 explaining that the notice proposing to levy tax at 12.5% is bad in law, hence, liable to be dropped. Again, the Assistant Commissioner, Velachery, after considering the objections, proceeded to issue another notice dated 13.12.2013 recording the submission of the petitioner found in the objections, citing a reason that a copy of sale invoice was not produced. Once again, the petitioner filed a detailed objections dated 07.03.2014 reiterating that the earlier objections 13.05.2013 also be taken into account. However, in the objections dated 07.03.2014, the petitioner also submitted copies of the sale invoices. In the said objections, it was stated that in view of Advance Ruling issued under Section 48A of the Act dated 05.06.2013 for the very same commodity, notices issued by the respondent is liable to be dropped.

5. It may be mentioned herein that the first respondent has forwarded the deviation report to the second respondent reiterating that in view of Advance Ruling dated 05.06.2013, the case of the petitioner had to be dropped, however, the second respondent rejected the said request and returned the file to the first respondent. In the meanwhile, the Assessment Circle throughout the State of Tamil Nadu was re-organized, resultantly, the first respondent became the Assessing Officer as defined under Section 2(5) of the Act. In view of the subsequent development, the petitioner met the first respondent with details of the objections and the advance ruling with copy of the Invoices, and thereby requested him to drop the same. To that effect, he has also filed a representation dated 07.01.2015 specifically mentioning Section 48A(3) of the Act, which mandates that any clarification issued by the Advance Ruling is binding upon all the Assessing Officers working under the Special Commissioner.

6. It is well settled that the Assessing Officer is a

quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or direction of the higher authorities. However, the first respondent failed to appreciate that throughout the State of Tamil Nadu, the goods, namely, corrugated sheet and steel structures, are assessed and levied tax at 5% only as declared goods falling under Entry 41 of the First Schedule to the TNVAT Act read with Section 14 of CST Act.

7. Be that as it may, since the first respondent failed to grant an opportunity of hearing before enhancing the turnover from Rs.6,32,89,746/- to Rs.7,38,45,800/- without notice to the petitioner, the impugned orders are liable to be set aside.

8. Accordingly, by setting aside the impugned orders, this Court remits the matter back to the respondent to re-consider the same afresh on merits, after giving an opportunity of personal hearing to the petitioner.

9. With this direction, both the writ petitions are allowed. Consequently, the connected M.Ps are closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr
To

1 The Assistant Commissioner (CT)
Nanganallur Assessment Circle No.30
4th Floor Medavakkam Main Road
Madipakkam, Chennai 91

2 The Deputy Commissioner
(CT)(South) Enforcement
PAPJM Buildings
Greams Road Chennai 6

3 The Joint Commissioner
Enforcement II PAPJM Buildings
Greams Road
Chennai 6.

2 cc to Mr.V.Sundareswaran,Advocate, SR.No.21422

1 cc to Spl.Government Pleader,Sr.No21539

W.P. NOs. 10356 and
10357 of 2015
and
M.P. Nos. 1 and 1 of 2015

ssi(co)
pmk.18.5.2015