IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13215 & 13216 of 2015

Tvl.SRM Engineering Construction
Corporation Pvt Ltd.,
rep.by its Accounts Manager
K.Muthu
No.24, G N Chetty Road
T.Nagar
Chennai 600 017 .. Petitioner in both the writ petitions

-vs-

1. The Joint Commissioner (CT)
Central Division
4th Floor, C T Building
Greams Road
Chennai 600 006

2. The Assistant Commissioner (CT)
Ashok Nagar Assessment Circle
Chennai 600 078 .. Respondents in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the first respondent and quash the impugned orders in S.P.Nos.06 of 2015 dated 8.4.2015 & 05 of 2015 dated 13.4.2015 respectively.

For Petitioner :: Mr.P.R.Kumar

For Respondents :: Mr.A.R.Jaya Prathap
Government Advocate

ORDER

These writ petitions have been directed against the impugned orders dated 8.4.2015 and 13.4.2015 respectively, wherein the Joint Commissioner (CT), Chennai Central Division has directed the petitioner to pay 50% of the disputed interest of Rs.4,17,31,302.00 which works out to Rs.2,08,65,651.00 in respect of the assessment year 2009-10 and 50% of the disputed interest of Rs.3,90,60,929.00

which works out to Rs.1,95,30,465.00 in respect of the assessment year 2010-11 apart from furnishing sufficient security/bank guarantee to the satisfaction of the assessing officer for the balance disputed interest in full pertaining to the two assessment years, in terms of Rule 14(15) of the Tamil Nadu Value Added Tax Rules, on or before 30.4.2015.

2. Assailing the approach adopted by the respondents, the learned counsel for the petitioner, drawing the attention of this Court to the second proviso to Section 42(3) of the Tamil Nadu Value Added Tax Act, 2006, submitted that the respondents have no jurisdiction whatsoever, in view of the above provision, to pass the impugned orders.

3. Mr.A.N.R.Jaya Prathap, learned Government Advocate takes notice on behalf of the respondents.

4. To answer the issue raised in these writ petitions, it is necessary to extract the second proviso to sub-section (3) of Section 42 of the Tamil Nadu Value Added Tax Act, as follows:-

> ''Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.''

5. A mere reading of the above proviso clearly shows that the impugned orders demanding 50% of the disputed interest are running contrary to the aforesaid proviso. When the second proviso to sub-section (3) of Section 42 of the Tamil Nadu Value Added Tax Act is clear that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment, the interest payable under the sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and the same shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be. Admittedly, the revision petitions are seized by the Joint Commissioner (CT), Chennai Central Division, the first respondent herein. Therefore, in all fairness, the impugned orders directing the petitioner to pay 50% of the disputed interest

and also to furnish sufficient security/bank guarantee to the satisfaction of the assessing officer for the balance disputed interest are liable to go. Accordingly, the impugned orders are set aside and the writ petitions are allowed. Needless to mention that the pending revision petitions may be taken up at an early date for final disposal on merit. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT)
   Central Division
   4th Floor, C T Building
   Greams Road
   Chennai 600 006

2. The Assistant Commissioner (CT)
   Ashok Nagar Assessment Circle
   Chennai 600 078

+ 2 ccs to Mr.P.R. Kumar, Advocate SR.23668 &23669

+ 1 cc Government Pleader Sr.24150

RJ(CO)
EU 21.05.2015

W.P.Nos.13215 & 13216 of 2015