IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.16367 to 16372 of 2015
& M.P.No.1 of 2015 in each W.P.

M/s.India Builders (Chennai) Ltd.,
Rep. by its Manager,
No.AA-49, 3rd Main Road,
2nd Street, Anna Nagar,
Chennai-600 040. .. Petitioner in all the Writ Petitions

Vs.

Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Chennai-600 010. .. Respondent in all the Writ Petitions

Writ Petition No.16367 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2008-09, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

Writ Petition No.16368 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2009-10, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

Writ Petition No.16369 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2010-11, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

Writ Petition No.16370 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2011-12, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

Writ Petition No.16371 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2012-13, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

Writ Petition No.16372 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33271024360/2013-14, dated 26.03.2015, quash the order as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representation, dated 04.05.2015 and to revise the assessment order under Section 84 of the TNVAT Act as per the decision of the Apex Court in the case of M/s.Builders Association of India Vs. Union of India reported in 1989 (Vol.73) STC 370 and also as per Article 366 (29) (A) (b) of the Constitution of India.

For petitioner in all the Writ Petitions : Mr.C.Baktha Siromoni
For respondent in all the Writ Petitions: Mr.A.N.R.Jayaprathap, Govt. Advocate(T)

ORDER

The petitioner-Company which is a registered dealer under the TNVAT Act, claims that they are civil work contractors and they have filed their monthly Returns and paid tax to the respondent. Pursuant to the inspection of the place of business by the enforcement officials, inspection report was filed, relying upon the same, apart from gathering information from the departmental website-intranet, the respondent issued notices to the petitioner on 27.01.2015. In the said notices, it is alleged that there was difference in the sales and purchase turnover for the respective assessment years and hence, the respondent proposed to levy tax and penalty. It is alleged by the petitioner that in the said notices, while asking the petitioner to file their objections for the abovesaid alleged difference, no details were furnished. Hence, the petitioner sought for providing opportunity of hearing to them. But without considering the specific request, the impugned orders for the respective assessment years, were passed, indicating the tax due, Input Tax Credit (ITC) due, penalty, etc., apart from issuing Demand Notice in Form-O and RR therein. It is the grievance of the petitioner that without even considering their reply/objections, the impugned orders dated 26.03.2015 have been passed. It is specifically stated in the impugned orders that the petitioner did not file any objections, which according to the petitioner is improper. Hence, the present Writ Petitions are filed challenging the said orders dated 26.03.2015.

2. Learned counsel appearing for the petitioner submitted that the petitioner-Company sent letters, dated 19.02.2015 to the respondent, seeking for certain particulars so as to file their detailed objections and the said letters had been duly received by the respondent, in proof of which, the petitioner enclosed the Speed Post Acknowledgement in page 91 of the typed set of papers filed along with the Writ Petitions. Despite the same, the respondent proceeded to observe in the impugned orders that no objections had been filed by the petitioner, which is nothing but non-application of mind on the part of the respondent while passing the impugned orders, apart from violation of principles of natural justice. The learned counsel for the petitioner further submitted that the petitioner, after receipt of the impugned orders, filed petitions under Section 84 of the TNVAT Act on 04.05.2015, for rectifying certain errors apparent on the face of the impugned orders, dated 26.03.2015 and it would be suffice that the same may be considered by the respondent on merits.

3. The learned Government Advocate appearing for the respondent submitted that the said petitions filed by the petitioner on

04.05.2015, will be considered by the respondent on merits, after giving due opportunity of hearing to the petitioner.

4. In view of the above submissions, the respondent is directed to consider the said petitions filed by the petitioner on 04.05.2015 under Section 84 of the TNVAT Act, on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. The said exercise shall be completed by the respondent within six weeks from the date of receipt of a copy of this order. The Writ Petitions are disposed of accordingly. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

cs

Copy to

The Assistant Commissioner (CT)
Amaindakari Assessment Circle,
Chennai-600 010.

1 cc to Mr..C.Baktha Siromoni, Advocate Sr.No.39816
1 cc to Spl.Government Pleader(T).Sr.No.40100

W.P.Nos.16367 to 16372 of 2015

rv(co)
pmk.25.8.2015