IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.18074 to 18076 of 2015
and
M.P.Nos.1 of 2015

Herve Pomerleau International
Canada and Consolidated construction
Consortium Ltd.
rep. by its DGM Finance
R.Suresh
No.5 2nd Link Road Mylapore
Chennai-4 ... Petitioner in all WPs

Vs

Assistant Commissioner (CT)
Mylapore Assessment Circle
No.46 Greenways Road
Chennai-28 ... Respondent in all WPs

PRAYER : The Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus to call for the records of the case and to quash impugned orders passed in TIN/33170702860/ 2012-2013, 2011-12 and 2010-11 respectively dated 30.4.2015 by the respondent and further direct the respondent to redo the assessment after calling for the books of accounts of the petitioner and without following the report of the Enforcement Wing Authorities.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.N.Murali

For Respondent : Mr.V.Haribabu, AGP(T)

C O M M O N O R D E R

Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These two writ petitions are filed by Herve Pomerleau International Canada and Consolidated construction Consortium Ltd., represented by its DGM Finance, R.Suresh, challenging the impugned proceedings passed by the Assistant Commissioner (CT), Mylapore Assessment Circle, Chennai in TIN/33170702860/ 2012-2013, 2011-12 and 2010-11 respectively dated 30.4.2015 to direct the respondent to redo the assessment, after calling for the books of accounts of the petitioner, and without following the report of the Enforcement Wing Authorities.

3.1 Learned Senior Counsel appearing for the petitioner, while assailing the impugned orders dated 30.04.2015, submitted that the petitioner being the registered dealer on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) reported the works contract turnover through monthly returns and discharged their tax liability under Section 5 of the TNVAT Act and also provided the "Form S" issued by the respondent to the Contractee M/s Airport Authority of India and on that basis, TDS was not deducted for the years 2010-11 and 2011-12 and as regards the assessment year 2012-13, the petitioner applied for issue of "Form S" before the respondent but the same was not provided till date.

3.2. In the meanwhile, according to the learned Senior Counsel for the petitioner, the place of business of the petitioner was inspected by the Central Enforcement Wing II on 28.10.2014 by group of officers attached to the said wing. A statement was also recorded from the executive of the petitioner company. Subsequently, show cause notices dated 20.02.2015 were issued for all the three years on the basis of the statement recorded by the Enforcement Wing Officials and on receipt of the show cause notices, detailed replies were filed through their letters dated 26.03.2015 and 08.04.2015, elaborately dealing with the proposals of the respondent. However, the respondent wrongly confirmed the proposals in the impugned orders dated 30.04.2015, which were served on them on 29.05.2015.

3.3 While admitting the fact that the petitioner was provided with an opportunity of personal hearing to explain their case in detail, learned Senior Counsel for the petitioner submitted that during the course of personal hearing, at no point of time, the respondent has sought for production of books of accounts. Therefore, the representative of the petitioner Company had not produced the books of accounts, however, the respondent passed the impugned orders in respect of the assessment years 2012-13 and 2011-12 against the petitioner stating they have not filed the relevant statistical information such as the value of materials purchased during the previous year but consumed during the year, value of materials actually purchased during the year, value of materials consumed out of those purchased during the year and the value of materials not consumed during the year but carried over to the next year and as far as the assessment year 2010-11 is concerned, the respondent has stated in the impugned order that they have not produced all the original tax invoices for verification even at the time of personal hearing afforded to them on 08.04.2015.

3.4 Explaining further, learned Senior Counsel for the petitioner submitted that all the particulars stated to be not filed are available in the books of accounts and since the respondent has not called for the production of the books of accounts and other relevant documents, the representative of the petitioner Company have not produced the same, as a result, the impugned orders have been passed. He would further submit that in view of the above error committed, if one more chance is given to the petitioner, the representative of the petitioner Company would be in a position to place whatever documents relied on by the respondent in the respective impugned orders and thereafter the respondent can pass a detailed order, otherwise, the petitioner would be put to grave hardships.

4.1 Per contra, learned Additional Government Pleader (Taxes) appearing for the respondent at the threshold, opposing the above prayer, urged before this Court to dismiss the writ petitions on the ground that the impugned orders are appealable before the Appellate authority, hence, this writ petition is not maintainable.

4.2 Learned Additional Government Pleader (Taxes) further submitted that when the petitioner was issued with notices dated 20.02.2015 calling upon them to file detailed explanation for three years from 2010-11 to 2012-13, they have filed detailed objections through their letters dated 26.03.2015 and 08.04.2015. Thereafter, the respondent also issued memos dated 27.03.2015 granting an opportunity of personal hearing on 08.04.2015, making use of the personal hearing granted to the petitioner, the official representative of the petitioner's Company appeared and placed all the materials sought for, however, they have not placed the books of accounts. Therefore, the petitioner cannot seek for one more opportunity, when the orders under challenge have been passed, after giving a reasonable opportunity.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Although this Court, finds merit in the submissions made by the learned Additional Government Pleader (Taxes) for the respondent, however, a reading of the impugned orders in respect of the assessment years 2012-13 and 2011-12 shows they have not filed the relevant statistical information such as the value of materials purchased during the previous year and what was consumed during the year, value of materials actually purchased during the year, value of materials consumed out of those purchased during the year and the value of materials not consumed during the year but carried over to the next year and as far as the assessment year 2010-11 is concerned, a mere reading of the same shows that they have not produced all the original tax invoices for verification even at the time of personal hearing afforded to them on 08.04.2015 may be for the reason that those doucuments were not asked for. In the absence of a proper statement reconciling the purchases reported in the monthly returns filed by the dealers with the purchases adopted in their balance sheet for the year accompanied by the relevant details of purchases and in the absence of the original tax invoices on which the dealers have claimed input tax credit, the respondent came to the conclusion that the explanation offered by the petitioner cannot be accepted.

7. Admittedly, an opportunity of personal hearing was granted to the petitioner. During the course of personal hearing, it is the duty cast upon the respondent to ask the assessee to produce all the relevant documents including the one or two required for assessment. In the present case, when the petitioner was in possession of all the documents, without asking production of the above stated documents, the respondent was not correct in stating that the relevant statistical information such as the value of materials purchased during the previous year but consumed during the year, value of materials actually purchased during the year, value of materials consumes out of those purchased during the year and the value of materials not consumed during the year but carried over to the next year have not been produced as far as assessment years 2012-13 and 2011-12 are concerned and all the original tax invoices are not produced as far as assessment year 2010-11 is concerned. Therefore, this Court is of the considered view that though when all the

documents were available with the representative of the petitioner at the time of personal hearing, the same could not be produced as they were not asked for by the respondent.

8. In view of the above, while setting aside the impugned orders dated 30.04.2015 and remitting the matters back to the respondent for fresh consideration, this Court directs the petitioner to produce all the aforementioned documents before the respondent which were stated to be not produced within a period of ten days from the date of receipt of a copy of this order and on receipt of the same, the respondent shall pass appropriate orders afresh on merits and in accordance with law. It is needless to mention that it is for the respondent to issue notice of hearing again to the petitioner and thereafter to pass appropriate orders. Further, this Court makes it very clear that the petitioner shall not ask for any adjournment and in the event of the petitioner seeking any such adjournment, it is for the respondent to ignore the same and proceed with the matter.

9. In the result, the writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rg

To

Assistant Commissioner (CT)
Mylapore Assessment Circle
No.46 Greenways Road
Chennai-28

+3cc's to Mr.N.Murali, Advocate, S.R.No.30847
+1cc to the Special Government Pleader(Taxes), S.R.No.30984

W.P.Nos.18074 to 18076 of 2015

CTK(CO)
CA(05/08/2015)