IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. Nos.23323 to 23325 of 2015 and
M.P.No.1 of 2015 in all W.Ps.

Emas Engineers and Contractors Private Limited
rep. by its Authorized Signatory
M.Narayamurthi,
No.6, First Main Road,
Gandhi Nagar, Adyar, Chennai-20. .. Petitioner in all W.Ps.

-vs-

Assistant Commissioner (CT),
Kottupuram Assessment Circle,
No.46, Greenways Road,
Chennai-600 028. .. Respondent in all W.Ps.

PRAYER in W.P.Nos.23323 to 23325 of 2015 : These Writ Petitions under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to impugned proceedings of the respondent passed in TIN/33670861956/2011-2012 dated 24.06.2015, 2012-2013 dated 25.06.2015 and 2013-2014 dated 26.06.2015 and quash the same and further direct the respondent to complete the assessment after considering objections and providing personal hearing in accordance with the provisions of the TNVAT Act, 2006.

For petitioner in all WPs : Mr.N.Murali

For respondent in all WPs : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)



C O M M O N   O R D E R

These writ petitions are filed against the impugned orders passed by the Assistant Commissioner (CT), Kotturpuram Assessment Circle in TIN/33670861956/2011-2012 dated 24.06.2015, TIN/33670861956/ 2012-

2013 dated 25.06.2015 and TIN/33670861956/2013-2014 dated 26.06.2015 respectively.

2. Heard Mr.N.Murali, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

3. On a perusal of the records, it is seen that the impugned orders are passed mainly on two grounds. Before passing the impugned orders, when the petitioner was issued with Pre-revision notices dated 31.07.2015 inviting the petitioner to file their objection within 15 days time, a detailed reply was filed by the petitioner on 05.08.2014 i.e. within 15 days from the date of receipt of the pre-revision notice. Subsequently, he was also issued with another pre-revision notice dated 14.08.2014 once again inviting the petitioner to file their objections, if any, within 15 days time. On receipt of the same, the petitioner again filed their reply dated 29.08.2014 within a period of 15 days from the date of receipt of the pre-revision notice dated 14.08.2014. But the impugned orders dated 24.06.2015, 25.06.2015 and 26.06.2015 have proceeded as though the petitioner has not filed his reply/objections. The relevant portion of the impugned orders is extracted hereunder:

> ''To the notice issued, the dealers have not filed any objection till date. Therefore, the proposal is confirmed.''

4. Therefore, in view of the fact that when the respondent has erroneously reached an unilateral conclusion holding that no reply was filed and wrongly confirmed the proposal, thereby causing irreparable hardship to the petitioner, with levying a penalty of Rs.27,06,908, Rs.5,12,585/- and Rs.17,13,088/- respectively for the Assessment years 2012-13, 2013-2014 and 2014-15 under Section 27(3)(a) of the Tamil Nadu Value Added Tax Act and calling upon the petitioner to pay the balance amount of Rs.98,77,717, Rs.5,12,585/- and Rs.17,13,088/- respectively, it is contended that the impugned order is the result of non-application of mind by the respondent.



5. A perusal of the reply accompanied with the acknowledgement would clearly show that the petitioner has filed the reply/objections in time without asking any lame excuse. Therefore, the findings given by the respondent clearly shows the non-application of mind of the Assessing Officer which are bound to be set aside.

6. Accordingly, the impugned orders of the respondent are set aside and the Writ Petitions are allowed and the matters are remanded back to the respondent to reconsider the matter afresh. It is needless to state that the respondent shall give a personal hearing before passing fresh orders. Further, while passing the orders, the respondent is also directed to consider the detailed reply filed by the petitioner in each case. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi

To
Assistant Commissioner (CT),
Kottupuram Assessment Circle,
No.46, Greenways Road,
Chennai-600 028.

+ 3 ccs to Mr.N. Murali, Advocate Sr.39282
+ 1 cc to Special Government Pleader Sr.39975

W.P. No. 23323 to 23325/2015

KM(CO)
EU 02.09.15