IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2015

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

WP.No.24353 of 2015 & MP.No.1 of 2015

M/s. Raj Kishore Engineering
Constructions P. Ltd.,
rep. by its Managing Director
S.Rajasekaran ... Petitioner

Versus

1.The Assistant Commissioner [CT]
Vadapalani Assessment Circle,
1, Greams Road, Chennai-6. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent in his proceedings in TIN Nos.33791465424/2013-14 and quash the order dated 28.05.2015.

For Petitioner : Mr.R.L.Ramani, Senior Counsel
for Mr.P.Radhakrishnan

For Respondent : Mr.Kanmani Annamalai,
Additional Government Pleader [Taxes]

ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel appearing for Mr.P.Radhakrishnan, learned counsel appearing for the petitioner and Mr.Kanmanni Annamalai, learned Additional Government Pleader [Taxes] who accepts notice for the respondent and with their consent, the writ petition itself is disposed of at the admission stage itself.

2. This writ petition has been filed seeking to quash the order of the respondent dated 28..05.2015 made in TIN No.33791465424/2013-14.

3. Learned Senior counsel submitted that the petitioner, a works contractor, filed the returns for the year 2013-14 and is deemed to have been assessed under Section 22(2) of TNVAT Act. Their case has not been chosen for a detailed scrutiny under section 22(3) of the TNVAT Act, nor the name of the petitioner had been exhibited in the notice board of the respondent for detailed scrutiny. However, a notice under Section 22(2) of the TNVAT Act was issued pointing out certain defects related to Form WW and payment of TDS, thereby treating the returns as incorrect and incomplete. The next contention of the learned Senior counsel for the petitioner is that since the respondent had admitted the fact that the petitioner had taken the machinery on hire basis, to execute the works contract, levying the tax under Section 4 of the TNVAT Act, is unsustainable. It is further contended that in the impugned notice dated 23.01.2015, it has been stated that the premises of the dealer had been inspected by the Enforcement Wing on 18.12.2013 and the proposal has been formulated for implementation. When that being the case, it is open to the authorities to re-open the assessment for the year 2012 - 2013 and not for the subsequent year i.e., 2013-14.

4. For the preposition that the assessing officer shall not simply follow the report of the enforcement wing officials, learned Senior counsel drew the attention of this Court to the Division Bench decision dated 25.03.2013, in W.A.Nos.521 and 522 of 2013 wherein, in paragraph 6, it has been held as:

> "As the communication dated 05.10.2012 is an advisory issued to the respondents, while considering the objections to be filed by the appellant, the appropriate respondent is directed to bear in mind the provision of law and also a decision, without being influenced by the Advisory dated 05.10.2012."

5. The learned Senior counsel also placed reliance on the order passed by this Court in W.P.No.9343 to 9345 of 2015, on the same set of facts.

6. Learned Additional Government Pleader (T) fairly submitted that a mistake has been crept in inadvertently in the impugned order by relying the inspection report of the enforcement wing officials and prays that necessary directions be issued to the respondent.

7. Admittedly, the respondent relied the inspection report of the Enforcement Wing dated 18.12.2013 for the assessment year 2013-14, which is impermissible.

8. In view of the above, I set aside the impugned order and remit the matter to the respondent for passing appropriate order afresh, by taking into account the objections filed by the petitioner after affording due opportunity of being heard. The respondent shall consider all the details related to the assessment year in question and proceed further on merits and in accordance with law, for passing the order. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

smi

To

The Assistant Commissioner [CT],
Vadapalani Assessment Circle,
1, Greams Road,
Chennai-6.

+1cc to Mr.P.Radhakrishnan, Advocate, S.R.No.41713
+1cc to the Special Government Pleader(Taxes), S.R.No.41535

WP.No.24353 of 2015
&
MP.No.1 of 2015

KM(CO)
CA(26/08/2015)