IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.R.MAHADEVAN

W.P.Nos.25458 and 25459 of 2015
and
M.P.Nos.1 of 2015

BSC KGLC (Consortium)
Rep by its Partner
67 Basin Bridge Road
Old Washermenpet Chennai 21 ... Petitioner in both the Writ Petitions

Vs

The Assistant Commissioner (CT)
Washermenpet Assessment Circle
No.20, Kummalamman Koil Street
Chennai 81 ... Respondent in both the Writ Petitions

Writ petitions have been filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records on the files of the respondent herein in TIN 33431222346/2011-12 and 2012-13 respectively dt 29.5.2015 to quash the same with the direction to redo the assessment after providing an opportunity of being heard along with their objections dated 1.12.2014.

For Petitioner : Mr.R.Kumar

For Respondents : Mr.S.Manoharan Sundaram,
Additional Government Pleader(T)

COMMON ORDER

Heard Mr.R.Kumar, learned Counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. These writ petitions are filed challenging the orders passed in TIN 33431222346/2011-12 and 2012-13 respectively dated 29.5.2015 and to direct the respondent to redo the assessment, after providing an opportunity of being heard, along with their objections dated 1.12.2014.

3. The petitioner is a registered dealer on the files of the respondent both under the TNVAT Act and CST Act. The petitioner is a Works Contractor and complying with the provisions of the TNVAT Act and they are filing their monthly returns through e filing. The Airport authority of India had awarded a work order for construction of additional bays at Chennai Airport to the petitioner and the work was commenced in the year 2007. As per section 22(2) of the Act, the assessment of the petitioner is deemed to have been assessed on 30.06.2012. While so, the place of business of the petitioner was inspected by the officers of the Enforcement Wing on 13.06.2014 and the books of accounts of the petitioner for the assessment years in question were verified and based on the report of the Enforcement Wing, the respondent has issued notices dated 12.11.2014. The petitioner filed their objections by letter dated 01.12.2014 with connected documents. Thereafter, an opportunity of personal hearing was sought for finally by the petitioner. However, no communication was received from the respondent. To the surprise of the petitioner, the respondent confirmed the proposal without affording due opportunity of personal hearing. Hence, the petitioner is before this Cort.

4. According to the learned counsel for the petitioner, as per the dictum laid by the Honourable Supreme Court in the case reported in M/s Gannon Dunkerley and Ors. Vs. State of Rajasthan and Ors. reported in (1993) (88 STC 204) (1 SCC 364), the value of the goods involved in the execution of works contract will have to be determined after taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover as follows:-

a) Labour charges for execution of works;

b) Amount paid to a sub-contractor for labour and services;

c) Charges for planning, designing and architect's fees;

d) Charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract;

e) Cost of consumables such as water, electricity, fuel, etc. used in the execution of works contract the property in which is not transferred in the course of execution of a works contract;

f) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services

g) Other similar expenses relatable to supply of labour and services

h) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

Further, according to him, though detailed objections citing various decided cases were filed by the petitioner, pursuant to the notices issued by the respondent, some of the objections had only been considered. That apart, according to him , while giving the finding, the reasoning given by the petitioner had been cited as the finding of the respondent, which cannot be countenanced. Hence, the learned counsel has sought for setting aside of the impugned orders.

5. A perusal of the impugned orders reveals that there is total non application of mind on the part of the respondent while dealing with the issue on hand. The reasoning given by the petitioner had been cited as a finding of the respondent. Hence, this Court finds it appropriate to set aside the impugned orders and remit the matter back to the authority to look into each and every one of the objections already filed by the petitioner and pass appropriate orders.

6. Accordingly, the impugned orders dated 29.05.2015 passed by the respondent are set aside and the matters are remitted back to the respondent with a direction to look into each and every one of the objections filed already by the petitioner and consider the same and pass orders on merits and in accordance with law, after affording due opportunity to the petitioner of being heard. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Washermenpet Assessment Circle
No.20, Kummalamman Koil Street
Chennai 81

+1cc to Mr.R.Kumar, Advocate, S.R.No.43038
+1cc to the Special Government Pleader(Taxes), S.R.No.43259

W.P.Nos.25458 and 25459 of 2015

GP(CO)
CA(04/09/2015)