IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.27805 to 27808 of 2015
and M.P.Nos.1 of 2015

K.G. Construction Ltd [Petitioner]
Rep. by its Partner
C. Banumathy
No. 17, Mohammed Husain Colony
Kolathur Chennai - 600 099

Vs

The Assistant Commissioner (CT) FAC
Adayar Assessment Circle
46 Greenways Road Chennai - 600 028
[Respondent]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the files of the Respondent herein in TIN No. 33720961499 / 2007 - 08 to 2010-2011 respectively dated 27.2.2015 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.S.Manoharan Sundaram, AGP(T)

COMMON ORDER

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed challenging the orders of the respondent issued in TIN No. 33720961499 / 2007 - 08 to 2010-2011 respectively dated 27.2.2015.

3. According to the learned counsel for the petitioner, the petitioner being a registered dealer on the files of the respondent are engaged in the construction activity of Laying Roads, Bridges for the

Corporation of Chennai and Highways Department upto the year 2012, for which returns were filed by them and the taxes due thereon were paid on the deemed sale value of the materials purchased from the taxable dealers and the purchased materials were used in the construction activity in and around the City of Chennai. Further, according to the learned counsel, the petitioners have stopped the entire construction activity and are not operating from their principal place of business at Adayar, but were carrying on the entire operation from their branch at Kolathur, which fact was intimated to the officers of the Enforcement Wing on 09.05.2012. On 30.05.2012, the Enforcement Wing Officials obtained a statement, in which, certain defects were pointed out and the petitioners undertook to reconcile the said defects and will pay the dues if any. While that being so, the respondent issued notices dated 23.01.2015, which were not served on the petitioner. The grievance of the petitioner according to the learned counsel for the petitioner is that relying on the alleged defects pointed out by the Enforcement Wing Officers, the respondent, in the said notices dated 23.01.2015, has proposed to revise the respective assessments under Section 27(1) of the Act, apart from levying penalty under Section 27(3) of the Act and based on that the impugned orders dated 27.02.2015 came to be issued. That apart, according to the learned counsel for the petitioner, the respondent in the impugned orders has stated that though notices were issued to the business place directing them to file their objections along with records, since the same were returned unserved on 28.01.2015, they have no other option except to confirm the proposals.

4. The learned counsel for the petitioner submitted that both the notices dated 23.01.2015 as well as the impugned orders dated 27.02.2015 were communicated to their principal place of business, whereas the petitioner has already intimated to the Enforcement Wing Officers on 30.05.2012 itself about the closure of the Adayar Principal Place and about their business operation at Kolathur. Hence, according to him, there was no proper service of notice as well as the impugned order on the part of the respondent as provided under Rule 19 of the VAT Rules, 2007. However, according to him, the impugned orders were communicated to them on 10.04.2015, in response to which, the petitioner also by their letter dated 29.04.2015 has sought for an opportunity to file their objections. But, the respondent sent a notice dated 15.05.2015 for recovery of tax and penalty by RPAD to their branch office, without considering their letter dated 29.04.2015. Therefore, according to him, it is apparent that the respondent is aware of the present address of their branch office and hence service of notices and the orders in the principal place of business which was closed cannot be said to be proper service.

5. That apart, according to the learned counsel for the petitioner, again by proceedings dated 2.6.2015, recovery proceedings were initiated under Section 45 of the Act by attaching the bank accounts of the petitioner, which was also sent to the address of the branch office. Hence, the orders dated 27.02.2015 issued are in gross violation of principles of natural justice and not in accordance with the provisions of the Act.

Based on the above, the learned counsel for the petitioner has sought for allowing of the writ petitions.

6. For the assessment years 2007-2008 to 2010-2011, assessment orders came to be passed on 27.02.2015, without serving proper notices. The one and only allegation against the impugned orders is that no pre-assessment notices were served on the petitioners before passing the impugned orders, which is in violation of principles of natural justice. When the matters were taken up for hearing on 04.09.2015, on this aspect, the learned Additional Government Pleader (Taxes) was directed to get instructions after proper verification of the assessment files.

7. Today, the learned Additional Government Pleader (Taxes) after verifying the concerned file, by producing the same before this Court submitted that no pre-assessment notice was served before passing the impugned orders. The learned Additional Government Pleader (Taxes) also fairly submitted that the respondent may be directed to issue fresh notices and on receipt of the same, the petitioner may be directed to file their objections and on receipt of the same, the respondent may be directed to consider the objections and pass appropriate orders within a time frame.

8. Hence, for the reason that violation of principles of natural justice is proved, the impugned orders dated 27.02.2015 cannot be sustained. In view of the same, by quashing the impugned orders dated 27.022015, the matters are remitted back to the respondent for passing orders afresh. The respondent is directed to issue fresh notices within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notices, the petitioner is directed to file their necessary objections along with documentary evidences within a period of two weeks thereafter and on receipt of such objections, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter, after providing due opportunity to the petitioner.

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) FAC
Adayar Assessment Circle
46 Greenways Road Chennai - 600 028

+4 CC to MR. N.INBARAJAN ADVOCATE. SR.NO. 52351
+1 CC to Special Govt.Pleader(Taxes). SR.NO.52452

W.P.Nos.27805 to 27808 of 2015

CO-PPA
JD 07/10/2015