IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2015

Coram

The Hon'ble Mr.JUSTICE R.MAHADEVAN

W.P.No.30727 of 2015
and M.P.No.1 of 2015

Tvl.Real Image Media
Technologies Pvt.Ltd.
A Private Limited Co.
Rep by its Chief Legal Officer
P.Murali Krishna
No.7B Third St Balaji Nagar
Royapettah Chennai 14 [Petitioner]

Vs

The Assistant Commissioner (CT)
Royapettah Assessment Circle
Greenways Road Chennai 28 [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of Writ of Certiorari to call for the records of the respondent in TIN 33880781185/2012-13 and quash the impugned assessment orders dt 24.7.2015 and 31.8.2015 passed by the respondent.

For Petitioner : Mr. R.Sivaraman

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition is filed challenging the assessment orders dated 24.07.2015 and 31.08.2015 passed by the respondent.

3. The petitioner Company is carrying on business as a Trader and Works Contractor. They provide comprehensive equipment maintenance services to Customers and they are charging works contract tax from the customers to whom such services are provided. This service falls under the category of other works contract in terms of Section 6(1)(iii) of the TNVAT Act, 2006. According to the petitioner, pursuant to the VAT audit conducted by the Enforcement Wing Officials, for the assessment year 2012-13, the respondent had issued notice dated

15.05.2015, wherein, by adopting 5% rate of tax, the petitioner was directed to pay the balance tax in respect of the works contract. Thereafter, on 30.06.2015, yet another notice was also issued, pointing out that the works contract turnover sought to be assessed only at 14.5% instead of 4%, in view of amendment to Section 6. The petitioner has filed detailed objections for both the notices. Surprisingly, an order of assessment for the said assessment year 2012-13 was passed on 24.07.2015, by coming to the conclusion that the petitioner is paying tax under Section 5 and therefore, not eligible for the compounded rate of tax at 5%, which is not stated so in the notice dated 30.06.2015 by assessing the works contract turnover estimating 5% and 14.5% and demanding a sum of Rs.20,48,315/-. While that being so, yet another original order dated 31.08.2015 was passed for the same assessment year 2012-13, treating the same works contract as short payment, by accepting the entire turnover regarding the works contract, without following Section 27 of the Act. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner specifically submitted that there cannot be two original assessment orders for the same assessment year. Further, according to him, the grounds raised in the show cause notices have not been dealt with in the assessment orders and subject matter decided in the assessment orders viz., the two assessment proceedings dated 24.07.2015 and 31.08.2015 are entirely different than that of the notices issued. Hence, the learned counsel for the petitioner has sought for quashing of the impugned assessment orders dated 24.07.2015 and 31.08.2015.

5. The learned Additional Government Pleader appearing for the respondent fairly submitted that the matter may be remanded to the respondent for passing orders afresh, since there cannot be two original assessment orders for the same assessment year.

6. In view of the fact that there cannot be two original assessment orders for the same assessment year, the impugned orders dated 24.07.2015 and 31.08.2015 are set aside and the matter is remitted back to the respondent for passing orders afresh. It is made clear that the respondent shall issue fresh notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is directed to file objections along with all the supportive documents within a further period of two weeks and on receipt of such objections, necessary orders be passed by the respondent on merits and in accordance with law, within a period of four weeks thereafter, after considering the objections filed and after affording due opportunity to the petitioner.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.
Rg

Sd/-
Assistant Registrar (CS-IV)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Royapettah Assessment Circle
Greenways Road,
Chennai - 600 028

+1 C.C. To The Special Government Pleader (Taxes) in sr.No.66461

W.P.No.30727 of 2015

RSK(CO)
sd : 30/12/2015