IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.3133, 3134, 3136 and 3137 of 2015
and M.P.Nos.1 of 2015

Gokulam Electricals ... Petitioner in W.P.3133 & 3134/15
Rep by its Proprietor Parthiban
20 Sivaraj Street, Chennai 45

Sri Krishna Electricals
Represented by its Proprietrix
P.Muthalammal
20 Sivaraj Street Chennai-45.
... Petitioner in W.P.3136 & 3137/15

Vs

The Assistant Commissioner (CT)
Tambaram Assessment Circle Chennai 45
... Respondent in all WPs

Writ Petition Nos.3133 and 3134 of 2015 filed under Article 226 of the Constitution of India seeking a writ of certirorarified mandamus calling for the records on the files of the respondent herein in his TIN 33290885251 / 2012-13 and 2013-14 respectively dt 19.1.2015 and quash the same and direct the respondent herein to refund the TDS amount which are covered by the TDS Certificate to an amount of Rs.5 707/- and Rs.1 75 017/- respectively.

Writ Petition Nos.3136 and 3137 of 2015 filed under Article 226 of the Constitution of India seeking a writ of certirorarified mandamus calling for the records on the files of the Respondent herein in his TIN. 33440887836/2012-13 and 2013-14 respectivley dated 19.1.2015 and quash the same and direct the Respondent herein to refund the TDS amount which are covered by the TDS Certificate to an amount of Rs.4 65 626/- and Rs.2 72 831/- respectively.

For petitioners : Mr.N.Inbarajan

For respondent : Mr.ANR.Jayapratap,
Government Advocate

C O M M O N O R D E R

These writ petitions have been filed challenging the orders of the respondent with respect to levy of interest under Section 42(3) of the TNVAT Act, 2006 dated 19.01.2015 and to direct the respondent herein to refund the respective TDS amount which are covered by the TDS Certificate to the petitioners.

2. The petitioners are assessees on the file of the respondent. They are undertaking electrical contracts. They opted to pay tax at compounded rate under Section 6 of the TNVAT Act and filed returns in Form L along with tax at 4%. As the petitioner, inadvertently instead of paying taxes at the rate of 5%, paid only taxes at the rate of 4%, originally, notices dated 13.10.2014, enclosing the complete details with regard to taxes to be paid and the taxes received, followed by difference of taxes to be remitted were issued. The delay in payment of taxes was also indicated in the respective annexures. Thereafter, considering the objections filed, on 19.11.2014, orders came to be passed confirming the proposal and indicating the balance amount to be paid. Thereafter, the petitioners remitted the said amounts. After receiving the payment, by notices dated 19.01.2015, the respondent demanded interest, against which, these writ petitions are filed.

3. According to the learned counsel for the petitioners, the respondent has not followed the provisions of TNVAT Act, 2006 viz., Section 42(3) of the TNVAT Act, 2006 and hence, the impugned orders are liable to be quashed.

4. On the other hand, the learned Government Advocate, relying on the counter affidavit submitted that the respondent had already informed to pay the difference of tax due together with the interest due under Section 42(3) of the Act by notices dated 13.10.2014 and since the petitioners have not raised any objection with regard to levy of interest, the impugned orders came to be passed.

5. Heard the learned counsel for the petitioners and Mr.ANR.Jayapratap, learned Government Advocate for the respondent.

6. Considering the submissions made by the learned counsel on either side, this Court feels it appropriate that as against impugned demands, there is an alternative remedy available in the Act under Section 54 of the Act.

7. Hence, the petitioners are permitted to file revision petitions along with necessary stay applications, within a period of two weeks from the date of receipt of a copy of this order and on such filing of the revision petitions along with stay applications, the same shall be entertained and taken up on file by the authority concerned without raising any issues with regard to limitation and after affording due opportunity, the same shall be considered on merits and in accordance with law. Such exercise shall be completed by the authority/respondent within a period of six weeks from the date of receipt of revision petitions along with stay applications from the petitioners. Till stay applications are disposed of, it is made clear that no recovery proceedings shall be initiated.

The writ petitions are ordered accordingly. 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)
Tambaram Assessment Circle Chennai 45

+2cc's to Mr.N.Inbarajan, Advocate, S.R.No.48358
+1cc to the Special Government Pleader((Taxes)), S.R.No.48935

W.P.Nos.3133, 3134, 3136 and 3137 of 2015

SV(CO)
CA(24/09/2015)