IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NOS.4219 AND 4220 OF 2015
AND M.P.NOS.1 OF 2015

Tvl.KE VEE ARR & Co.,
represented by its Managing Partner
K.R.Sentil Sundar,
Old No.173-B (New No.440-B),
Main Road, Palacode - 636 808,
Dharmapuri District. .... Petitioner in both WPS

Vs.

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode. .... Respondent in both WPs

Prayer: Writ Petition in W.P.No.4219 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of a writ of Certiorarified Mandamus calling for the records on the files of the respondent in TIN.33233290981/2009-10 dated 27.11.2014 and quash the same as being without jurisdiction and authority of law and further direct the respondent to pass order afresh on merits and in accordance with law.

Writ Petition in W.P.No.4220 of 2015 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of a writ of Certiorarified Mandamus calling for the records on the files of the respondent in TIN.33233290981/2010-11 dated 27.11.2014 and quash the same as being without jurisdiction and authority of law and further direct the respondent to pass order afresh on merits and in accordance with law.

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For Petitioner in: Mr.R.Senniappan
both W.Ps

For Respondent : Mr.Kanmani Annamalai,
in both W.Ps Addl.Govt.Pleader (Taxes)

COMMON ORDER

Admittedly, the cost of the material purchased and used in the execution of works contract has not been taken into consideration

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by the authority, is the contention of the petitioner. In the revision notices of assessment for assessment years 2009-10 and 2010-11, the respondent - assessing officer has proposed to assess to the best judgment on the ground that the petitioner had not produced accounts in relation to the materials purchased and used in the execution of works contract. The petitioner submitted that he has given detailed reply to the respondent on 15.4.2014 explaining the nature of transaction and the material used in the execution of works contract and that the materials have been supplied by the Government of Tamil Nadu, wherein agreement has been entered by the petitioner and the Government of Tamil Nadu. Completely ignoring the objections, particularly, the tabular column in page No.2 of the explanation, the respondent proceeded to pass orders, which are impugned in these writ petitions and straight away brushed aside decisions quoted by he petitioner and the objections were held to be not acceptable by overruling the same.

2. The respondent could not deny the contention of the petitioner that the cost of the material supplied have got to be ignored as Government has supplied materials for execution of the work. Without considering the same, impugned orders have been passed.

3. Therefore, this Court is of the view that the impugned orders have to be set aside. Accordingly, the matter is remitted to the respondent - original authority to consider the case of the petitioner and pass orders after affording an opportunity of personal hearing on 10.3.2015 and on the said date the petitioner shall appear and explain in detail and substantiate his case. In case the petitioner fails to appear on that day, it is open to the respondent to pass orders in accordance with law by recording reasons and while passing orders, the respondent shall not be influenced by the impugned Orders that are being set aside by this Court. The writ petitions are allowed accordingly and the impugned orders are set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode.

1 cc to Spl.Government Pleader (Taxes), Sr. 9086
1 cc to M/s.R. Senniappan, Advocate, Sr. 8965

W.P.NOS.4219 AND 4220
OF 2015

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