IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WP.Nos.9343 to 9345/2015 & MP.Nos.1,1 & 1/2015

Tvl.Raj Kishore Engineering
Construction [P] Ltd., rep. by its
Managing Director
S.Rajasekaran. .. Petitioner in all the writ petitions

Versus

1.The Assistant Commissioner [CT]
Vadapalani Assessment Circle, 1,
Greams Road, Chennai-6.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai. .. Respondents in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in his proceedings in TIN Nos.33791465424/2010-11 ; 33791465424/2011-12 ; and 33791465424/2012-13 and quash the orders dated 27.02.2015 ; 10.03.2015 and 27.02.2015 respectively.

For Petitioner in all the petitions :Mr.R.L.Ramani, Senior Counsel for Mr.P.Radhakrishnan

For Respondents in all the petitions :Mr.Manoharan Sundaram, AGP [Taxes]

COMMON ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel appearing for Mr.P.Radhakrishnan, learned counsel appearing for the petitioner ; Mr.Manoharan Sundaram, learned Additional Government Pleader [Taxes] accepting notice for the respondents and with their consent, the writ petitions itself are disposed of at the admission stage itself. Since the issue involved in these writ petitions and the parties are one and the same, the above petitions are disposed of by the following common order.

2.The petitioner has filed these writ petitions seeking to quash the orders of the 1st respondent dated 27.02.2015, 10.03.2015 and 27.02.2015 made in TIN Nos.33791465424/2010-11;33791465424/2011-12;and 33791465424/2012-13 respectively.

3. Learned counsel for the petitioner submitted that on the basis of scrutiny of accounts, the respondents have chosen to invoke Section 27 of the TNVAT Act, which power can only be exercised by the Principal Commissioner under Section 22(3) of the TNVAT Act. The next contention of the learned counsel for the petitioner is that though the respondents had admitted the fact that the petitioner had taken the machinery on hire basis, levying the tax under Section 4 of the TNVAT Act, is unsustainable. It is further contended that in the impugned notice dated 27.02.2015, it has been stated that the premises of the dealer has been inspected by the Enforcement Wing on 18.12.2013 and the proposal has been formulated for implementation. When that being the case, it is open to the authorities to re-open the assessment for the year 2012 - 2013 and not for the earlier years.

4. Learned counsel also drew the attention of this Court to the decision of dated 25.03.2013 in W.A.Nos.521 and 522 of 2013 wherein, in paragraph 6, it has been stated as:

> "As the communication dated 05.10.2012 is an advisory issued to the respondents, while considering the objections to be filed by the appellant, the appropriate respondent is directed to bear in mind the provision of law and also a decision, without being influenced by the Advisory dated 05.10.2012."

5. Learned Additional Government Pleader (T) also submitted that a mistake has been kept in inadvertently in the impugned orders.

6. In the view of the above, unless and otherwise the same has been set right by the authority, I am of the view that the respondents cannot proceed further, more particularly, as per the observations made by the Division Bench of this Court stated supra.

7. Hence, I set aside the impugned orders and remit back the matters for passing appropriate orders afresh. The authority shall pass orders by taking into account the observation made by the Division Bench of this Court in the judgment stated supra and they can reopen for the entire years, if there is any material for earlier years and proceed further in accordance with law. These writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner [CT]
Vadapalani Assessment Circle, 1,
Greams Road, Chennai-6.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai.

+ 3 ccs to M/s.P.Radhakrishnan, Advocate SR.17989

+ 1 cc Government Pleader Sr.17989

RV(CO)
EU 06.05.2015

W.P.Nos.9343 to 9345/2015