IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2016

Coram

The Hon'ble Mr.Justice M.DURAISWAMY

W.P.Nos.10540 to 10543 and 11236 to 11239 of 2016
and
W.M.P.No.9243 to 9249 and 9753 to 9756 of 2016

M/s. Viom Networks Ltd
Rep. by its Additional Vice President
No.45 Damodaran Street
South Usman Road
T.Nagar Chennai-600 017 [Petitioner in all WPs]

Vs

1 The Asst. Commissioner (CT) (FAC)
Anna Salai II Assessment Circle
4th Floor PAPJM Building Annexe Buildings
Greams Road Chennai-600 006

2 The Appellate Deputy Commissioner (CT)
Chennai Central 3rd Floor
PAPJM Building Annexe Buildings
Greams Road Chennai-600 006

[Respondents 1 & 2 all WPs]

3 The Sales Tax Appellate Tribunal
City Civil Court Buildings
II Floor Chennai-600 104

[3rd respondent in W.P.Nos.10540 to 10543 of 2016]

4 Commissioner of Commercial Taxes
Chepauk Ezhilagam Complex
Chennai-600 005

[4rd respondent in W.P.Nos.10540 to 10543 of 2016 and 3rd respondent in W.P.Nos.11236 to 11239 of 2016]

5 Government of Tamil Nadu
Rep. by its Secretary Commercial Taxes
Department Fort St. George Chennai-600 009

[5th respondent in W.P.Nos.10540 to 10543 of 2016 and 4th respondent in W.P.Nos.11236 to 11239 of 2016]

Writ Petition Nos.10540 to 10543 of 2016 filed under Article 226 of the Constitution of India, seeking for issuance of Writ of certiorari calling for the records relating to the impugned Notice issued by the 1st respondent In TIN 33040620433/2007-2008 2008-2009 2009-2010 2010-11 respectively dated 11.03.2016 quash the same and direct the 1st respondent not to proceed with the recovery of the amounts

Writ Petition No.11236 to 11239 of 2016 filed under Article 226 of the Constitution of India, seeking for issuance of Writ of certiorari calling for the records relating to the Impugned Order in A.P.No.389 to 392/2014 respectively dated 27.1.2016 passed by the 2nd respondent quash the same

For Petitioner : Mr.Raghavan Ramabadran
For Respondents: Mr.S.Kanmani Annamalai, AGP

C O M M O N O R D E R

W.P.Nos.11236 to 11239 of 2016 are filed by the petitioner to issue writs of certiorari to call for the records relating to the Impugned Orders in A.P.Nos.389 to 392/2014 respectively dated 27.1.2016 passed by the 2nd respondent and to quash the same.

2. W.P.Nos.10540 to 10543 of 2016 are filed by the petitioner to issue writs of certiorarified mandamus to call for the records relating to the impugned Notice issued by the 1st respondent In TIN 33040620433/2007-2008 to 2010-11 dated 11.03.2016 and to quash the same and to direct the 1st respondent not to proceed with the recovery of the amounts.

3.1 It is the case of the petitioner that they are engaged in the business of providing service of passive telecommunication infrastructure to telecommunication companies and are registered under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act).

The petitioner bought goods inter-state against Form-C for this purpose and the same was used in the construction, erection and installation process. Further, according to the petitioner, there is no transfer of property by the petitioner to the contractor. On the other hand, there involves transfer of property in the execution of Works Contract by the contractor to the petitioner, i.e., Contractor is the Seller and the petitioner is the Buyer. Further, according to the petitioner, they have been duly deducting TDS under Section 13 of the TNVAT Act on this Works Contract and remitting the same to the department.

3.2. Further, according to the petitioner, notices were issued on 06.09.2013 by the 1st respondent to them misconstruing the petitioner to be the Seller, proposing to levy tax on the petitioner under Section 5 and Section 22(4) of the TNVAT Act and under Section 27(3) of TNVAT Act for the assessment years 2007-2008 to 2010-2011. The petitioner has sent detailed replies on 03.10.2013. The 1st respondent passed orders on 21.10.2013 stating that the petitioner has not filed any objection. Aggrieved over the same, the petitioner filed appeals before the 2nd respondent against the orders passed by the 1st respondent, by paying 25% of the tax demand for each of the assessment years towards mandatory pre-deposit. The stay petitions filed by the petitioner were disposed of by the 2nd respondent by granting conditional stay subject to payment another 25% of the tax demand and to furnish bank guarantee for the rest of the 50% tax demand and the entire penalty amount for each of the assessment years, by orders dated 11.12.2013. The said orders were challenged by the petitioner before this Court in W.P.Nos.2765 to 2768 and 3282 to 3285 of 2014. This Court, by order dated 19.02.2014, directed the petitioner to pay another 25% of the tax demand and execute personal bond for the balance 50% tax demand and the entire amount of penalty for each of the assessment years. According to the petitioner, they have complied with the conditions imposed by this Court in the above said writ petitions. Subsequently, the 2nd respondent took up the appeals filed by the petitioner for final disposal and dismissed the same by orders dated 27.01.2016. Subsequently, a demand notice dated 11.03.2016 was issued by the 1st respondent. Aggrieved over the same, the petitioner is before this Court.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. The learned counsel appearing for the petitioner submitted that the impugned orders dated 27.01.2016 were passed by the 2nd respondent, without giving an opportunity of hearing to the petitioner. Further, the learned counsel submitted that

since no opportunity was given by the 2nd respondent to the petitioner, the same is violative of principles of natural justice.

6. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents submitted that since the petitioner was not given an opportunity of personal hearing, the impugned orders dated 27.01.2016 passed by the 2nd respondent may be set aside and the matters may be remitted back to the 2nd respondent for fresh consideration. Further, the learned Additional Government Pleader submitted that in view of the same, the demand notice issued on 11.03.2016 which are challenged in W.P.Nos.10540 to 10543 of 2016 may be set aside.

7. Having regard to the submissions made by the learned counsel on either side, taking note of the fact that the petitioner was not given an opportunity of personal hearing by the 2nd respondent, which is violative of principles of natural justice, the impugned orders dated 27.01.2016 passed by the 2nd respondent are liable to be set aside and accordingly the same are set aside. The matters are remitted back to the 2nd respondent for fresh consideration. The 2nd respondent is directed to decide the appeals in A.P.Nos.389 to 392 of 2014 on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner.

With these observations, the writ petitions in W.P.Nos.11236 to 11239 of 2016 are disposed of.

8. In view of the order passed in W.P.Nos.11236 to 11239 of 2016, the demand notice issued by the 1st respondent on 11.03.2016 is liable to be set aside and accordingly, the same is set aside. The Writ Petitions in W.P.Nos.10540 to 10543 of 2016 are allowed. However, it is open to the 1st respondent to issue demand notice, after the disposal of the appeals by the 2nd respondent.

No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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+2 ccs to Mr.Lakshmi Kumaran Advocate sr.21139
+2 ccs to Special Government Pleader taxes sr.21105,21106

W.P.Nos.10540 to 10543
and 11236 to 11239 of 2016

aa07/04/2016