IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:30.06.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19014 to 19017 of 2015 and

M.P.No.1 to 1 of 2015

M/s.PRV Constructions (P) Ltd.,
Rep.by its General Manager Engg. & Admn.
6/73, (Correct No: 21B) ARK Colony,
Eldams Road, Teynampet, Chennai - 600 018.
.. Petitioner in all WPs.

Vs.

1.The Principal Secretary/Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

2.The Assistant Commercial Tax Officer,
Enforcement East Group - II,
Room No.29, I Floor, Greams Road,
Chennai - 600 006.

3.The Commercial Tax Officer (CT)
Group VI, Central Enforcement Wing-II
Chennai - 600 006.

4.The Commercial Tax Officer,
Alwarpet Assessment Circle,
Mylapore Taluk Office Building,
I Floor, 46, Greenways Road,
Chennai - 600 028. .. Respondents in all WPs.

Prayer:Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the 4th respondent in TIN:33790821247/2012-13, 2011-12, 2010-11, 2009-10 respectively and quash the order dated 21.05.2015 passed therein.

(In all WPs)
For Petitioner : Mr.R.L.Ramani, Senior Counsel
for Mr.B.Raveendran

For Respondents : Mr.Manokaran Sundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.R.L.Ramani, learned Senior Counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, the writ petition is taken up for final disposal.

2.The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 on the file of the 4th respondent, has filed these writ petitions challenging the assessment orders for the years 2009-2010 to 2012-2013. The petitioner was issued a notice dated 20.05.2014 alleging short levy of tax. The petitioner sent a reply on 27.06.2014. Subsequently, another notice was issued stating that on cross verification of the sales reported by them to particular dealers, it was noticed that the petitioner have reported lesser sales whereas, the dealer at the other end has reported more purchases from the petitioner and thereby availed excess ITC. The petitioner sent reply to this notice on 19.05.2015 stating that during the relevant time they were following the system of filing monthly returns based on the suggestion provided by one of the Circle Officer who at the time examined their monthly filing system and advised them to follow the same. Therefore, the petitioner stated that as per the advise given by the Circle Officer, they have been filing the monthly returns. On receipt of the objections, the respondents, after providing an opportunity of personal hearing, completed the assessment and confirmed the proposal in the notice stating that the petitioner did not furnish any supportive documents to substantiate the correctness of the stand taken by them. This order is impugned in these writ petitions.

3.After hearing the learned counsel for the parties and perusing the materials placed on record, it appears that the petitioner's case is solely based upon two statements recorded by the 2nd and 3rd respondents dated 17.07.2009 and 11.11.2010. These statements have been recorded during VAT Audit wherein the Senior Manager of the petitioner has deposed as follows:

> “Further you have informed that the payment of VAT as per Section 3(2) is not applicable to us as we are dealers in works contractor. So you have advised us to pay the VAT as per Section 5 of the TNVAT Act 2006. We admitted the above points and accepted to pay the VAT against Deemed sale value by adding of G.P. on the purchase value.”

4.The petitioner along with their reply to the show cause notice have appended these statements, which were recorded by the Enforcement Wing and requested the respondent to sort out the matter at the earliest. However, the respondent while completing the assessment did not mention anything about the statements and as to whether the plea raised by the petitioner was a bona fide plea. It is submitted by the learned counsel for the petitioner that on and after 01.04.2013 they have discontinued the said patta of filing the returns and reverted back to the old method. So only for the period from 2009-2013, this issue has arisen.

5.The learned counsel for the petitioner submits that one more opportunity may be granted to the petitioner to place these materials and the respondents may be directed to consider the effect of those materials. However, to be entitled to one more opportunity to place all the materials before the respondents, this Court is of the view that the petitioner should be directed to pay a portion of the tax liability as demanded.

6.In the light of the above, these Writ Petitions are disposed of by directing the petitioner to pay 15% of the disputed tax within a period of six weeks from the date of receipt of a copy of this order and if such payment is effected by the petitioner within the time limit, then the petitioner would be entitled to treat the impugned proceedings as show cause notices and submit their objections to the same and the respondents are directed to afford an opportunity of personal hearing and conclude the proceedings in accordance with law. However, if the petitioner does not comply with the condition imposed by this Court, the benefit of this order will not enure to the petitioner and it is open to the respondent to proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sgl

To
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of Commercial Taxes,
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Chennai - 600 028.

+1 cc to Mr.B.Raveendran Advocate sr.36898/16
+1 cc to Special Government Pleader sr.37429/16

W.P.Nos.19014 to 19017 of 2015

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