IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.6.2016

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.26125 to 26129 & 26678 to 26682 of 2015
& all connected pending MPs

V.Krishnamoorthy, Contractor,	...Petitioner in WP.26125/2015
Madhusamy & Sons, rep. by its Partner M.Gandhi	...Petitioner in WP.26126/2015
K.Marigounder, Contractor	...Petitioner in WP.26127/2015
R.Murugesan, Contractor	...Petitioner in WP.26128/2015
KRM Contractors, rep. by its Partner R.Murugan	...Petitioner in WP.26129/2015
C.Velu, Contractor	...Petitioner in WP.26678/2015
Sri K.Vaithilingam Contractors	...Petitioner in WP.26679/2015
S.S.Engineering Contractor, rep.by its Partner S.Selvam	...Petitioner in WP.26680/2015
C.Appusamy Contractor	...Petitioner in WP.26681/2015
V.Navaneethakrishnan Contractors	...Petitioner in WP.26682/2015

Vs

The Assistant Commissioner (CT),
Omalur Assessment Circle, Omalur,
Salem District. ...Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent respectively in (i) TIN : 33673244082/2012-13 dated 22.4.2015; (ii) TIN : 33923244381/2012-13 dated 20.4.2015; (iii) TIN : 33143245974/ 2012-13 dated 22.4.2015; (iv) TIN : 33373243471/2012-13 dated 22.4.2015; (v) TIN : 33673246604/2012-13 dated 22.4.2015; (vi) TIN : 33843243746/2012-13 dated 20.4.2015; (vii) TIN : 33183243236/2012-13 dated 22.4.2015; (viii) TIN : 33103243280/2012-13 dated 20.4.2015; (ix) TIN : 33443243093/2012-13 dated 23.3.2015; and (x) TIN : 33743243801/ 2012-13 dated 20.4.2015 and quash the same as being contrary to the principle laid down by this Court in the judgment reported in (2007) 295 ITR 303 (Mad.) (V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another).

For Petitioners: Mr.R.Senniappan
For Respondent : Mr.V.Haribabu, AGP

COMMON ORDER

Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioners, who are registered contractors of the Public Works Department and who are registered dealers on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, have filed these writ petitions, challenging the orders of assessment for 2012-13.

3. Two grounds have been raised by the learned counsel for the petitioners. First is that the impugned orders have been passed without affording an opportunity of personal hearing. In support of his contention, reliance has been placed on the decision of the Hon'ble Division Bench of this Court in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another [(2007) 295 ITR 303].

4. The second ground raised by the learned counsel for the petitioners is that the petitioner had filed monthly returns and also paid tax and after due verification, the previous incumbent, who was functioning as the Assistant Commissioner (CT), Omalur Assessment Circle, was satisfied with the returns and issued certificates under Form S. The respondent erroneously observed in the impugned orders that no monthly returns have been filed and that the petitioners have not reported the turnover liable to tax.

5. In the light of the fact that the petitioners have not been afforded an opportunity of personal hearing as mandated and as pointed out by the Hon'ble Division Bench in the above

referred to decision, this Court is of the view that the matters should be decided afresh after due opportunity to the petitioners.

6. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioners. While doing so, the respondent shall verify as to the correctness of the submissions made by the petitioners that they filed returns and paid taxes and that the officer concerned, having been satisfied with the same, had issued the certificates under Form S. The respondent can call for the entire files relating to the petitioners and thereafter proceed in accordance with law. The petitioners are at liberty to exercise their option under Section 6 of the said Act, which shall be considered on merits and in accordance with law. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Omalur Assessment Circle, Omalur,
Salem District.

+2ccs to Mr.R. Senniappan, Advocate, S.R.No.34149, 34150
+1cc to the Government Pleader, S.R.No.34339, 34345

sCD(CO)
EU(27/06/2016)

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