IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29713 to 29718 of 2015 and
connected WMPs

M/s Casa Grande Private Limited
rep. by its Authorised Signatory,
Mr.S.Venkatesh .. Petitioner in all Petitions

vs.

The Assistant Commissiner (CT)
Sholinganallur Assessment Circle
No.141, Burma Colony, 1st Main Road
Perungudi, Chennai 600 096. .. Respondent in all Petitions

COMMON PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records of the respondent in TIN:33070761794/2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 respectively and quash the impugned revised order of assessment dated 10.7.2015.

For Petitioner (in all W.Ps) : Mr.V.Sundareswaran

For Respondent (in all W.Ps) : Mr.S.Kanmani Annamalai
Addl.Govt. Pleader

C O M M O N O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent in all Writ Petitions. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2.In all these Writ Petitions, the petitioner has challenged the orders of assessment dated 10.07.2015, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], for the assessment years 2007-08 to 2012-13.

3.The only issue which is involved in these cases is whether the respondent could have passed the impugned orders solely on the ground that the petitioner has not produced Form-S Certificate.

4.The petitioner's case is that unless and until the Department produce the Form-S Certificate, they were not in a position to furnish the same. The petitioner's request to the Assessing Officer was to consider their objections and verify the details through their official channel, since the dealers with whom they had transactions are all reputed dealers, who are registered before the various Assessment Circles in Chennai District and they are regularly filing their monthly returns and paying taxes. In other words, the petitioner would state that the respondent is insisting upon the compliance of something which they are unable to do for the reasons not attributable to them. One more contention raised by the petitioner is that the respondent has to independently apply his mind as the Assessing Officer should not be solely guided by the D-3 proposal.

5.From paragraph No.5 of the counter affidavit, it appears that the Assessing Officer has followed the instructions of the Audit Wing. But, this should not be the sole reason for confirming the D-3 proposal and complete the assessment. Further, the petitioner would contend that when section 13 of the Act has been held to be only procedural and Section 5 of the Act being the charging section for levy of tax on deemed sale of works contract, failure to discharge the alleged procedure under section 13 of the Act does not give a jurisdiction to the respondent to invoke its revisional powers under section 27 of the Act, moreso, when the sub-contractor had filed their return and paid tax under section 5 of the Act and the petitioner is entitled for deduction under Rule 8(5) of the Act.

6.Though the matter has been adjourned on several dates for getting instructions on the limited aspect as to whether the petitioner's plea that they are unable to obtain Form-S Certificate, specific instruction has not been given to the learned Additional Government Pleader on the said aspect. However, considering the facts and circumstances of the case, this Court is of the view that the Assessing Officer has to redo the assessment after causing appropriate verification through his official channel.

7.In the light of the above, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent to conduct a thorough verification of the details through their official channel, as to the stand taken by the petitioner stating that all the contractors are registered dealers as on date and they have been regularly filing returns before their respective Assessing Officer and paying the tax, after due verification, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissiner (CT)
Sholinganallur Assessment Circle
No.141, Burma Colony, 1st Main Road
Perungudi, Chennai 600 096.

+1cc to M/S.V.Sundareswaran, Advocate Sr.56976
+1cc to the Special Government Pleader SR.57156

W.P.Nos.29713 to
29718 of 2015

sm[co]
srg 12/11/2016