IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.09.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.34341 of 2015

and MP.No.1 of 2015

ASV Constructions Pvt. Ltd.,
Rep by its General Manager S.Sundaram,
59, Ormes Road,
Kilpauk, Chennai-10. .. Petitioner

Vs

The Assistant Commissioner [CT],
Ayanavaram Assessment Circle,
7th Floor, Dowlath Towers,
Taylors Road,
Kilpauk, Chennai-10 ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the Assessment Order TNGST/1002117/2006-2007 dated 31.08.2015 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.Joseph Prabakar, learned counsel appearing for the petitioner; Mr.K.Venkatesh, learned Government Advocate appearing for the respondent and with the consent of both sides, the writ petition is taken up for disposal.

2. The petitioner challenges the impugned order dated 31.08.2015, which is an Assessment Order for part of the year 2006-07, i.e., up to the period 31.12.2006. Since the year is already over, that would be a sufficient ground to set aside the impugned order and direct the respondent to re-do the assessment

in further full year. However, the facts as projected by the petitioner has convinced this Court to go into the manner in which, the respondent has completed the assessment and whether it satisfies the legal requirement. Inspection was conducted in the place of business of the petitioner on 26.10.2006. Based on such inspection, the respondent/ Assessing Officer issued Pre-Assessment Notices dated 18.11.2008, 24.12.2008 and 13.02.2009.

3. The petitioner submitted their objections on 20.02.2009 and 15.06.2009. Though the objections were received by the respondent, for about five years, no action was initiated by the respondent and the matter was put in cold storage till April 2015. No explanation has been given as to why no action has been taken for five years. After the expiry of five years, on 21.04.2015, the respondent issued a notice calling upon the petitioner to attend personal hearing on 30.04.2015. The petitioner attended the personal hearing and thereafter, filed another set of objections on 02.06.2015. After the objections were received, the respondent issued two fresh notices dated 08.07.2015 and 16.07.2015.

4. In the notice dated 08.07.2015, reference has been made to the Pre-Assessment Notice dated 18.11.2008 and in the notice dated 16.07.2015, the Pre-Assessment Notices dated 18.11.2008, 24.12.2008 and 13.02.2009 were referred to, apart from the petitioner's reply dated 16.07.2015. Thereafter, the respondent has passed the impugned Assessment Order. The manner in which the assessment has been completed, shows that there has been serious violation of Principles of Natural Justice. Apart from that, there are findings rendered by the Officer, which appears to be contradictory with the stand taken in the Pre-Assessment Notices. These mistakes have crept in, in the Assessment Orders, presumably due to the long delay between the inspection and the final order and that for a period of five years between 2009 to 2015, the matter was not taken up for consideration and the Officers have changed resulting in passing an order, which is full of inconsistencies. That apart, as already pointed out, the assessment is only for part of the year, i.e., from 01.04.2006 to 31.12.2006 and the Assessment Year 2006-07 is already over and therefore, the assessment should be done further for full year.

5. Accordingly, the Writ Petition is allowed and the impugned Assessment Order TNGST/1002117/2006-2007 dated 31.08.2015 passed by the respondent is set aside and the matter is remanded for fresh consideration. The petitioner is directed to submit a comprehensive objection to all the notices within a period of thirty days from the date of receipt of a copy of this order. On such objections being filed, the respondent shall

afford an opportunity of personal hearing, peruse the books of accounts and the documents produced by the petitioner and thereafter, re-do the assessment in accordance with law for the full year 2006-07. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
The Assistant Commissioner [CT],
Ayanavaram Assessment Circle,
7th Floor, Dowlath Towers,
Taylors Road,
Kilpauk, Chennai-10.

+1 CC to Mr. Joseph Prabhakar , Advocate Sr.No.51014
+1 CC to Spl., Govt., Pleader, Sr.No.51184

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NM (CO)
MD : 22/09/2016