In the High Court of Judicature at Madras

Dated : 20.7.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25101 of 2016 & WMP.No.21494 of 2016

M/s.RKC Estates, rep.by its
Proprietor Mr.Rajkumar Choudhry ...Petitioner

Vs

The Commercial Tax Officer,
Office of the Assistant Commissioner
(CT), Kaladipet Assessment Circle,
Tiruvottiyur, Chennai-19. ...Respondent

PETITION 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 No.33541109606/2015-2016 dated 20.6.2016 in so far as it proposed to impose tax and penalty on the civil works contract turnover is concerned, quash the same as illegal, arbitrary, without jurisdiction and against the provisions of the Act and further direct the respondent to assess the works contract turnover under Section 6 of the Tamil Nadu Value Added Tax Act.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 on the file of the respondent, has challenged the notice issued to the petitioner dated 20.6.2016 based upon the inspection conducted by the Enforcement Wing officials. The respondent proposed to demand tax along with interest and penalty based on a report given by the Enforcement Wing officials, which report, in turn, is based upon the verification of the data from the Inspector General of Registration.

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3. Learned counsel for the petitioner submits that the very basis of issuance of the notice, relying on the documents, which were registered in favour of the purchasers dated 2.2.2015 and 29.5.2015, is flawed in the light of the fact that during the assessment year 2015-16, the construction was not completed and it was completed only on 1.6.2016. Therefore, it is submitted that based on the registration effected by the petitioner, tax cannot be levied. That apart, the Assessing Officer cannot solely be guided by the report submitted by the Enforcement Wing officials. But, he should be satisfied before issuance of notice that the petitioner's income escaped assessment to tax. It is further submitted that there is absolutely no cause for levying penalty or demanding interest.

4. It is further pointed out by the learned counsel for the petitioner that by a letter dated 9.4.2014, the petitioner has exercised their option to pay tax under the composite method from 1.4.2014 to 31.3.2015 and this letter was received by the office of the respondent on 9.4.2014 itself as evidenced by the endorsement in the letter delivery book. Therefore, the contention of the petitioner is that these issues were not taken into consideration before the issuance of the impugned notice.

5. In my opinion, the issues pointed out by the petitioner could be raised before the Assessing Officer and the Assessing Officer, being a Statutory Authority, is enjoined with the statutory duty to consider the objections in a proper manner and not solely be guided by the report of the officials of the Enforcement Wing. If the Assessing Officer is to be guided by the report of the officials of the Enforcement Wing, then the Enforcement Wing as well could frame the assessment and there need not be any separate officer to be in charge of assessment. Therefore, at best, the Assessing Officer can rely upon the said material, but that cannot be the sole basis to take a decision against the petitioner.

6. Accordingly, the writ petition is disposed with a direction to the petitioner to raise all the contentions now raised in this writ petition before the Assessing Officer. The Assessing Officer shall consider the same in a proper manner and also the contention that the petitioner had opted to pay tax under the composite method by the letter dated 9.4.2014. The petitioner is directed to submit their objections to the impugned notice within a period of 15 days from the date of receipt of a copy of this order. Thereafter, the respondent shall afford an opportunity of personal hearing to the petitioner. During the course of personal hearing, if the petitioner requires any document, the same shall be furnished. Likewise, if there is any clarification required by the

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respondent, the same shall be clarified by the petitioner and if necessary, sufficient time should be granted for clarification and thereafter, the respondent shall frame the assessment in accordance with law. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

To

The Commercial Tax Officer, Office of the Assistant Commissioner (CT), Kaladipet Assessment Circle, Tiruvottiyur, Chennai-19.

1 cc to Special Government Pleader,(Taxes), sr.41095
1 cc to Mr.K.Soundararajan, Advocate, sr.41430

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