

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.26361 to 26366 of 2016
&
WMP.Nos.22601 to 22606 of 2016

M/s.Karthikeyan Foundation, rep.
by its Proprietor Mr.P.S.Karthikeyan

... Petitioner in
all the WPs

Vs

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Anna Nagar East, Chennai-102.

... Respondent in
all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records on the file of the respondent in RC/1376/2015 (Years 2014-15, 2013-14, 2012-13, 2011-12, 2010-11 and 2009-10 respectively) dated 30.6.2016, quash the same as illegal, against the principles of natural justice and fair play and contrary to the provisions of the Act and direct the respondent to give reasonable opportunity personal hearing and consider the objection independently without being influenced from the proposal received from the Enforcement Authority.

For Petitioner : Mr.T.Pramod Kumar Chopda

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON ORDER

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

2. In all these writ petitions, the petitioner challenges the assessment orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the Act) for the years 2009-10 to 2014-15.

3. The petitioner is a developer and civil contractor and is also engaged in promotion of apartment complexes. The place of business of the petitioner was inspected by the officials of the Enforcement Wing on 8.10.2015 and certain defects were noticed. Pursuant to the proposal sent by the Commercial Tax Officer, Group-I, CEW-I, Enforcement-I, Chennai-6, the respondent issued notices dated 11.1.2016, by referring to the defects pointed out by the Enforcement Wing. One factor, which has to be mentioned at this juncture, is that on the date of inspection, the petitioner did not have any registration under the provisions of the Act.

4. But, after the inspection was conducted, before the Inspecting Authority, the petitioner remitted the value added tax for the deemed sale in terms of Section 5 of the Act and subsequently, on 28.10.2015, the petitioner registered itself as a dealer under the Act. In the notices dated 11.1.2016, the respondent mentioned the tax payer identification number (TIN) of the petitioner. Thus, the respondent was aware that the petitioner was a registered dealer on the date, when the notices dated 11.1.2016 were issued, though they were unregistered dealers on the date of inspection by the officials of the Enforcement Wing on 8.10.2015.

5. On receipt of the notices dated 11.1.2016, the petitioner submitted a reply dated 25.1.2016 enclosing 8 documents in support of their stand. It is not in dispute that the respondent received the objections dated 25.1.2016. However, for about six months, the matters were in cold storage and the respondent did not take any action. Therefore, the petitioner submitted their further objections dated 28.6.2016. In the objections dated 28.6.2016, apart from other factual and legal aspects, the petitioner stated that the Institute of Chartered Accountants of India has prescribed Accounting Standards for every industry and in terms of AS 7(2), percentage completion method was adopted by the petitioner on the advice of their auditor. Under the said percentage completion method, the revenue is recognised as the contract activity progresses based on the stage of completion reached and the costs incurred in reaching the stage of completion are matched with this revenue, resulting in the reporting of results, which can be attributed to the proportion of work completed.

6. Therefore, the petitioner submitted that the contract receipt shown in the balance sheet actually does not represent any contract receipts from prospective flat buyers for construction of flats and hence, such contract receipt amount shown in the balance sheet cannot be taken for the purpose of arriving deemed sales turnover liable to tax under the Act.

Hence, the petitioner contended that by adopting the said method, they have already paid tax on the deemed sales turnover of goods involved in the execution of works contract as per their accounts and requested to drop the proposal for levy of tax as stated in the notices dated 11.1.2016.

7. With regard to levy of penalty, the petitioner would contend that the penalty cannot be levied, if the assessed turnover was found in the books of accounts of the dealer. In this regard, reliance was placed by the petitioner on the decision of this Court in the case of State of Tamil Nadu Vs. Shanmughanandha & Co. [reported in 104 STC 61] and the decision of the Hon'ble Supreme Court in the case of State of Madras Vs. S.G.Jeyaraj Nadar & Sons [reported in 28 STC 700].

8. With regard to the manner, in which, the Assessing Officer has to function, the petitioner pointed out that the respondent should exercise quasi judicial functions as an Assessing Authority. In this regard, the petitioner brought to the notice of the respondent the decision of the Hon'ble Division Bench of this Court in the case of Madras Granites (P) Ltd. Vs.CTO,Arisipalayam Circle,Salem [reported in 146 STC 642].

9. Specifically the petitioner requested for an opportunity of personal hearing. It is worthwhile to point out that even in the first objection dated 25.1.2016, the petitioner requested for an opportunity of personal hearing. Admittedly, the respondent did not give an opportunity of personal hearing to the petitioner, however proceeded to complete the assessments by passing one paragraph orders stating that the petitioner's contentions cannot be accepted, since, at the time of inspection, they were unregistered dealers and that the petitioner filed a copy of the sale deed for land cost and sample copies of four local purchase bills with details of purchases without mentioning the tax payer identification number of the sellers to prove whether the purchases were made locally.

10. It was further stated by the respondent in the impugned orders that the petitioner had not filed any proof of documents in support of the contentions as stated in their objection letters. Therefore, the respondent completed the assessment for the entire contract value and gave credit to the tax paid before the Enforcement Wing and demanded the balance tax.

11. According to the petitioner, they assessed deemed sale value and paid tax.

12. One more aspect to be noted is that in the preamble of the assessment orders, in column (1), as against "TIN No./year",

the respondent has referred to R.C.Number and it is not known as to why the respondent has not referred the tax payer identification number, when, in the show cause notices dated 11.1.2016, the tax payer identification number was referred to.

13. Be that as it may, the petitioner having submitted a detailed representation and relied upon the accounting standards in AS 7(2), which stipulates percentage completion method, the respondent ought to have examined the issue and without doing so, by cryptic orders, could not have rejected the petitioner's contentions.

14. The learned Additional Government Pleader, while supporting the impugned orders, submitted that if the petitioner seeks one more opportunity, they may be directed to pay 50% of the amount demanded in each of the cases and an opportunity may be granted.

15. In reply to such a contention, it is submitted that the petitioner has already paid tax on the deemed sales turnover involved in the execution of works contract as per their accounts.

16. Therefore, if the respondent does not accept the deemed sales turnover as assessed by the petitioner, then the respondent should conduct an enquiry and examine the books of accounts and thereafter pass a speaking order and the respondent should not have completed the assessments as done in the instant cases. Hence, this Court is not inclined to direct the petitioner to make any further payments, as the petitioner is entitled to an opportunity. In the light of the above, the impugned orders are held to be non speaking orders and are in violation of the principles of natural justice.

17. Accordingly, the writ petitions are allowed, the impugned orders are quashed and the matters are remitted back to the respondent for fresh consideration. The respondent shall consider the petitioner's objections dated 25.1.2016 and 28.6.2016 and the documents that they may produce, call for any further documents, if required and after affording an opportunity of personal hearing, redo the assessment in accordance with law. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

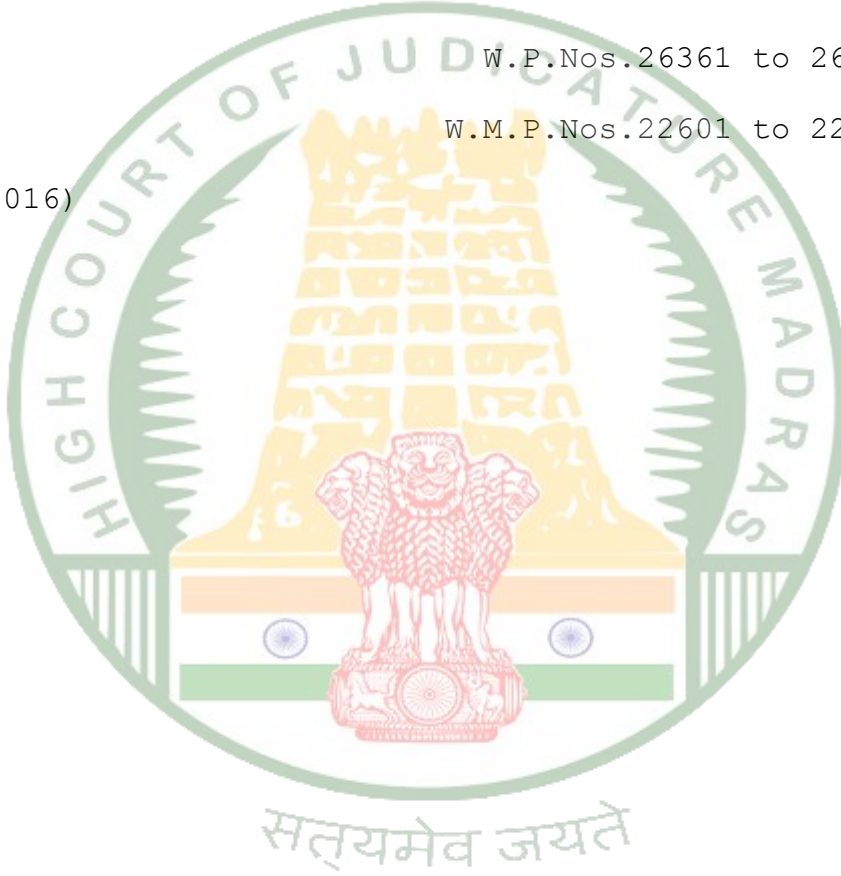
To

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Anna Nagar East,
Chennai-102.

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.42713
+1cc to the Special Government Pleader(T), S.R.No.43246

MSM(CO)
CA(10/08/2016)

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