IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27156 to 27159 of 2016
and
W.M.P.Nos.23326 to 23329 of 2016

Ulundurpet xpressways (P) Ltd.,
(Formerly known as
GMR Ulundurpet Expressways (P) Ltd.)
Represented by its Manager
Mr.Annamalai Muthu,
150/400, NH45, Toll Plaza, Vikaravandi,
Villupuram - 605 652, Tamil Nadu. ..Petitioner in all W.Ps

Vs

The Assistant Commissioner,
Commercial Tax Department,
Villupuram Assessment Circle-I,
Villupuram. ..Respondents in all W.Ps.

Prayer in W.P.No.27156 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order TIN 33154682587/2009-10 dated 27.05.2016 on the file of the respondent, quash the same and remand the matter for de novo adjudication by the respondent.

Prayer in W.P.No.27157 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order TIN 33154682587/2007-08 dated 17.05.2016 on the file of the respondent, quash the same and remand the matter for de novo adjudication by the respondent.

Prayer in W.P.No.27158 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order TIN 33154682587/2008-09 dated 27.05.2016 on the file of the respondent, quash the same and remand the matter for de novo adjudication by the respondent.

Prayer in W.P.No.27159 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in the impugned order TIN 33154682587/2006-07 dated 17.05.2016 on the file of the respondent, quash the same and remand the matter for de novo adjudication by the respondent.

For Petitioner in all W.Ps. : Mr.Mohammed Shaffiq

For Respondent in all W.Ps. : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

COMMON ORDER

Heard Mr.Mohammed Shaffiq, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) accepts notice on behalf of the respondent and with their consent, these Writ Petitions were taken up for final disposal.

2.The petitioner is a Company incorporated under the Companies Act and registered as an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act). The petitioner has been awarded a concessionaire agreement by the National Highways Authority of India to Design, Engineer, Construct, Develop, Finance, Operate and Maintain a four lane road in the existing two lane section from Tindivanam to Ulundurpet on DBFOT basis and the petitioner has sub-contracted the entire work to M/s.GMR Projects (P) Ltd., on a back to back basis. Notices were issued to the petitioner on 16.11.2015 for all the years proposing to revise the petitioner's assessment for the years 2006-07 to 2009-10. The common issue for all the assessment years is with regard to retention money which according to the respondent has not been refunded to the customer, namely, M/s.GMR Projects (P) Limited. The other two issues arise only in respect of two assessment years i.e. for the assessment year 2006-07, the additional issue is with regard to the Tax Deducted at Source (TDS), wherein they have stated that the petitioner had not proved with connected records such as Debit/Credit note, bank statement, etc., to prove that the TDS of Rs.12,10,821/- was refunded to the customer in the absence of the proof, the respondent proposed to deny the said benefit. The other additional issue which arise for the assessment year 2009-10 is with regard to the demand raised for an amount of Rs.30,694/-.

3.I propose to first consider the common issue which arises for all the years, namely, with regard to the non-refund of the retention money. The respondent in their explanation pointed out that the amount has been refunded to their Sub-Contractor and they produced the bank details in that regard. However, the respondent while completing the assessment stated that the bank account with Andhra Bank, Bangalore belongs to UE TRA CRA Construction Period EPC sub account and therefore rejected the petitioner's objection. On perusal of the documents filed in the typed set of papers, it is seen that the said account is an abbreviation of special account of the petitioner's Sub-Contractor M/s.GMR Ulundurpet Expressways Pvt. Ltd. A certificate to the said effect has been obtained by the petitioner from the Andhra Bank dated 22.07.2016 which is admittedly after the impugned assessment order. Had the respondent afforded an opportunity of personal hearing to the petitioner to explain, this mistake would not have occurred. Therefore, the matter requires to be sent back to the respondent to consider this aspect.

4.With regard to the other issue which arise for the assessment year 2006-07, namely, with regard to the Tax Deducted at Source, though the petitioner had produced Form R Statement, the respondent did not consider the same on the ground it does not contain the details of the Assessing Officer to whom it is furnished and his acknowledgment for having received the cheque and proof of their bank statement that the amount was debited from their accounts in confirmation of such payment.

5.The learned counsel appearing for the petitioner submit that if the Assessing Officer found that Form R to be defective then as per the decision of this Court and circular issued by the Commissioner, it should be returned to the petitioner for rectification of errors. Further it is submitted that the petitioner's Sub-Contractor have also obtained the refund. Therefore, the learned counsel would submit that if Form R is returned to the petitioner, they would effect necessary correction. The other additional issue which arises for the assessment year 2009-10 is with regard to the demand raised for an amount of Rs.30,964/-. Though such demand was raised, the petitioner while giving the objections on 16.05.2016 had merely stated that an amount of Rs.2,45,549/- is towards profit and sale of current investment and this amount does not involve any sale or transaction of any assets. The petitioner is at fault for not having substantiated the statement by producing the records. Therefore the learned counsel for the petitioner submit that one more opportunity may be granted to the petitioner to appear before the Assessing Officer and establish that the said amount does not involve any sale or transfer of any assets.

6.In the light of the above discussion, the matter requires to be sent back to the respondent for re-doing the assessment after affording an opportunity of personal hearing. Accordingly, the writ petitions are allowed and the impugned assessment orders are set aside and the matter is remanded to the respondent for fresh consideration and the petitioner is entitled to produce documents to establish the three issues which are raised in these matters and on production of the appropriate documents, the respondent shall consider the same and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

cse

To

The Assistant Commissioner,
Commercial Tax Department,
Villupuram Assessment Circle-I,
Villupuram.

+1 cc to the Special Government Pleader taxes
sr 44454

+1 cc to Mr.Mohammed shaffiq Advocate sr 44269

W.P.Nos.27156 to 27159
of 2016
and
W.M.P.Nos.23326 to 23329 of 2016

aa23/08/2016