IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.08.2016

Date of Reserving the Order	Date of Pronouncing the Order
19.08.2016	29.08.2016

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No.28936 of 2016
W.M.P.No.25015 of 2016

M/s.Aqua Designs India Pvt., Ltd.,
No.1, Jayanthi Nagar,
off 200 feet Road,
Kolathur,
Chennai - 600 009. ... Petitioner

Vs.

Principal Commissioner of Service Tax,
I Commissionerate,
Newry Towers,
2054-I, 2nd Avenue,
12th Main Road,
Anna Nagar West,
Chennai 600 040. ... Respondent

Prayer :-This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records from the respondent, wherein the impugned order in Original Nos.114-120/2015-16, dated 31.03.2016, was issued and to quash the same.

For Petitioner .. Mr.G.Natarajan for
Mr.S.Jaikumar

For Respondent .. Mr.S.R.Sundar CGSC

ORDER

The petitioner is a private limited company engaged in the activity of supply of various equipments relating to setting up of Water/Sewerage Treatment plants and other connected items and erection, commissioning and installation of the said plants.

The petitioner would state that value of various equipments supplied by the petitioner forms the major part of the value of the works and erection, commissioning and installation of the same is an activity, which in certain cases, is outsourced by the petitioner to the contractors. This according to the petitioner are works contracts as defined under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as the "Act") as well as under the Service Tax Rules. The petitioner would further state that wherever applicable, they have paid appropriate VAT/CST on the supply portion and paid service tax on the service portion of the value under Erection, Commissioning and Installation Service (ECIS) or under Commercial or Industrial Construction Service (CICS), or under Works Contract Service (WCS). It is further stated that in some cases, various equipments procured by the petitioner would be sold to their customers on transit sale basis and in such circumstances, the petitioner would be exempted from payment of Central Sales Tax as per Section 6(2) of the Central Sales Tax Act, 1956, (CST Act). With regard to the operation and maintenance of the plants, which is also undertaken by the petitioner apart from technical testing services, the petitioner is liable to pay for such service in terms of the Finance Act, 1994.

2. The petitioner were issued seven show cause notices/statements of demand, dated 19.04.2010, 21.04.2011, 13.12.2011, 21.06.2013, 23.05.2014, 24.10.2014 and 27.04.2015. These were issued under the provisions of Section 73(1)/73(1A) of the Finance Act respectively. From the voluminous set of documents filed before this Court running to about 526 pages, it is seen that the petitioner has given their reply to the show cause notices/statements of demand on various dates and there was one common reply for all the notices and demands, dated 29.03.2016, which runs to about 12 pages, which appears to be a comprehensive reply wherein apart from explaining the factual matrix, reliance has been placed on notification issued by the Government as well as to judicial precedents. The break up details of sales and service raised during the period from April 2005 to March 2008 and April 2010 to March 2014, were furnished as annexures to the common reply dated 29.03.2016. The petitioner further requested that the agreements and sale invoices can be traced to the copies submitted to the respondent along with the letters referred to in the common reply. Further, the petitioner admitted that they are unable to provide such break up details for the period from April 2008 to March 2010 for want of time. However, stated that all invoices and work orders were already made available and they can provide those break up details within 15 days, if time is granted. The respondent has adjudicated the show cause notices and passed a common order dated 31.03.2016, which is impugned in this Writ Petition. The order is a very elaborate order running to

about 74 pages. After referring to the proposals made in the show cause notices/statements of demand, the respondent has referred to the reply given by the petitioner to the show cause notices and the discussion and findings start from paragraph 11 of the order. It is seen that after the replies were received, oral and written statements have been made on behalf of the petitioner during the course of personal hearing and the respondents observed that the main issue to be decided in respect of all the notices issued for the period upto 30.06.2012 are:-

> (i) whether the agreement entered into by the assessee with their clients for providing water/waste water treatment/management is composite in nature involving design, drawing, process Engineering, procurement, supply, fabrication, assembling, testing, erection, commissioning and handing over; and
>
> (ii) whether service tax is to be paid on the service portion of the gross amount in connection with execution of erection & commissioning, works contract and turnkey projects excluding the actual value of materials involved (suffered sales tax) alone or by adopting the value as per notification No.01/2006 or as per works contract (Composition) scheme in as much as the value adopted by the assessee is on notional basis.
>
> For the period from 01.07.2012, the issue to be decided is
>
> whether the value adopted by the assessee as per Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006, is correct in as much as the assessee has not abated the actual value of materials which have suffered Sales Tax as required under the said Rule but have excluded the total value claimed as billed for 'supply'.
>
> 3. After mentioning about the above issues, which according to the respondent were common issues, the respondent observed that the other issues raised in the individual notices, will be considered notice wise.

4. At the commencement of the hearing of the Writ Petition, this Court posed a question to the learned counsel for the petitioner that as to why the petitioner should be permitted to bypass the appellate remedy available to the petitioner under the provisions of the Act by approaching the CESTAT. It is the submission of the learned counsel that the impugned order is a

result of grave inconsistencies and inspite of the petitioner having furnished all the details and documents including list of works executed during the year along with the copies of the work order and break up value of supply and service along with copies of invoices, the respondent failed to appreciate the same in a proper prospective and erroneously proceeded to pass the impugned order on the basis of his observations that the value of supplies and value of service as per the contract are only notional and disregarded the same. Therefore, the respondent by disregarding the voluminous evidence furnished by the petitioner has resulted in a perverse and illegal order.

5. The learned Senior Standing counsel appearing for the respondent while submitting that voluminous documents placed before this Court and the questions raised before this Court in this Writ Petition are all factual issues, which the petitioner can agitate before the CESTAT by filing an appeal and there is no justification to bypass the appellate remedy.

6. I have heard the learned counsels appearing for the parties and perused the materials placed on record.

7. It is beyond dispute that to test the correctness of the impugned order, a thorough probe into the factual matrix is required and the question would be can such an exercise be done in a Writ Petition especially when the provisions of the Act provide for a hierarchy of remedies. The Hon'ble Supreme Court in the case of Titaghur Paper Mills Co., Ltd., and Anr., vs. State of Orissa & Anr., reported in (1983) 142 ITR 663, pointed out the inadvisability of entertaining a writ petition questioning a sales tax assessment. It was pointed out that under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The Act thus provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution of India. The said view was reiterated in State of Goa vs. Leukoplast (India) Ltd., reported in 1997 (92) E.L.T., 19 (S.C)., wherein the question was whether the products are to be treated as “drugs or medicines” in common parlance. The Court held that these are basically questions of fact and there is no reason for the assessee company to bypass the statutory remedy and come to the Court with a Writ Petition and the questions, basically of facts should be agitated before the statutory appellate authority. Thus, considering the complicated nature of the facts involved in the instant case and to adjudicate the correctness of the impugned order, it would be necessary to re-examine the factual position, this Court is of the view that the petitioner should not be permitted to bypass

the statutory appellate authority which is not only an effective remedy, but is the efficacious remedy.

8. Hence, without going into the merits of the matter regarding the validity of the impugned order, the Writ Petition stands rejected as not maintainable.

9. In the result, the Writ Petition is dismissed. Leaving it open to the petitioner to work out their remedies as per the provisions of the Act. No costs. Consequently, connected Miscellaneous Petition is closed.
pbn

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

Principal Commissioner of Service Tax,
I Commissionerate,
Newry Towers,
2054-I, 2nd Avenue,
12th Main Road,
Anna Nagar West,
Chennai 600 040.

+ 1 cc to Mr.S.Jaikumar, Advocate Sr 48545
+ 1 cc to Mr.S.R.Sundar CGSC, Advocate Sr 48923

KR/31/8/16

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