IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29845 to 29847 of 2016 and

W.M.P.Nos.25838 to 25840 of 2016

M/s.G.K.Roofings India Private Limited,
rep.by its Director, Mr.K.Parthiban
No.3A, 45th Street, Nanganallur,
Chennai-600 061 ... Petitioner
in all the W.Ps.

Vs

1.The Assistant Commissioner (CT),
Nanganallur Assessment Circle,
No.30,4th Floor, Medavakkam Main Road,
Madipakkam, Chennai-600 091

2.The Deputy Commissioner (CT) Zone VIII,
PAPJM Buildings, Greams Road,
Chennai-600 006]

3.The Joint Commissioner, (CT)
East Division,
PAPJM Buildings, Greams Road,
Chennai-600 006 ... Respondents
in all the W.Ps.

Prayer in W.P.No.29845 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus to call for the records of the first respondent in TIN No.33320984708/2009-10, quash the impugned order dated 10.04.2015, in so far as it relates to the levy of sales tax at 12.5% on the turnover of Rs.14,12,34,794/- and further direct the first respondent to levy tax at 4% in view of Authority for clarification and advance Ruling in A.C.A.R.R.No.8/2013-14, dated 05/06/13 and A.C.A.R.R.No.7/2013-14 dated 05/06/2013, issued under Section 48A of the Tamil Nadu Value Added Tax 2006.

Prayer in W.P.No.29846 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus to call for the records of the first respondent in TIN No.33320984708/2010-11, quash the impugned order dated 10.04.2015, in so far as it relates to the levy of sales tax at 12.5% on the turnover of Rs.7,23,13,408/- and further direct the first respondent to levy tax at 4% in view of Authority for clarification and advance Ruling in A.C.A.R.R.No.8/2013-14, dated 05/06/13 and A.C.A.R.R.No.7/2013-14 dated 05/06/2013, issued under Section 48A of the Tamil Nadu Value Added Tax 2006.

Prayer in W.P.No.29847 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorarified mandamus to call for the records of the first respondent in TIN No.33320984708/2011-12, quash the impugned order dated 13.04.2015, in so far as it relates to the levy of sales tax at 12.5% on the turnover of Rs.1,31,85,835/- and further direct the first respondent to levy tax at 4% in view of Authority for clarification and advance Ruling in A.C.A.R.R.No.8/2013-14, dated 05/06/13 and A.C.A.R.R.No.7/2013-14 dated 05/06/2013, issued under Section 48A of the Tamil Nadu Value Added Tax 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents :Mr.S.Kanmani Annamalai,A.G.P.

ORDER

Heard Mr.V.Sundareswaran, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader, who accepts notice on behalf of the respondents and with the consent of either side, the writ petition itself is taken up for final disposal.

2. It is not disputed by the learned Additional Government Pleader for the respondents that the issue involved in these writ petitions is squarely covered by the decision of this Court in W.P.Nos.10356 and 10357 of 2015, dated 20.04.2015, which was filed by the petitioner for an identical relief. At this stage, it will be beneficial to refer to the operative portion of the said order as under:

"4. The case of the respondent, that the goods, namely, roof cladding and steel sheets, are taxable at 12.5%/14.5%, as they are classifiable under the residual entry, was denied by the petitioner. It is at this point of time, the Enforcement Wing Officials prepared inspection report and forwarded the same to the second respondent, who, on perusal of the said report, prepared D-3 report and again forwarded the same to the Assistant Commissioner, Velacherry Assessment Circle, who was the erstwhile assessing officer of the petitioner, for implementation. Subsequently, the said official, on receipt of D-3 report, issued a show cause notice dated 11.03.2013 to the petitioner calling for objections. On receipt of the notice, the petitioner filed their objections on 13.05.2013 explaining that the notice proposing to levy tax at 12.5% is bad in law, hence, liable to be dropped. Again, the Assistant Commissioner, Velachery, after considering the objections, proceeded to issue another notice dated 13.12.2013 recording the submission of the petitioner found in the objections, citing a reason that a copy of sale invoice was not produced. Once again, the petitioner filed a detailed objections dated 07.03.2014 reiterating that the earlier objections 13.5.2013 also be taken into account. However, in the objections dated 07.03.2014, the petitioner also submitted copies of the sale invoices. In the said objections, it was stated that in view of Advance Ruling issued under Section 48A of the Act dated 05.06.2013, for the very same commodity, notices issued by the respondent is liable to be dropped.

5. It may be mentioned herein that the first respondent has forwarded the deviation report to the second respondent reiterating that in view of Advance Ruling dated 05.06.2013, the case of the petitioner had to be dropped, however, the second respondent rejected the said request and returned the file to the first respondent. In the meanwhile, the Assessment Circle throughout the State of Tamil Nadu was re-organized, resultantly, the first respondent became the Assessing Officer as defined under Section 2(5) of the Act. In view of the subsequent development, the petitioner met the first respondent with details of the objections and the advance ruling with copy of the Invoices, and thereby requested him to drop the same. To that effect, he has also filed a representation dated 07.01.2015, specifically mentioning Section 48A (3) of the Act, which mandates that any clarification issued by the Advance Ruling is binding upon all the Assessing Officers working under the Special Commissioner.

6.It is well settled that the Assessing Officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or direction of the higher authorities. However, the first respondent failed to appreciate that throughout the State of Tamil Nadu, the goods, namely, corrugated sheet and steel structures are assessed and levied tax at 5% only as declared goods falling under Entry 41 of the First Schedule to the TNVAT Act read with Section 14 of CST Act.

7. Be that as it may, since the first respondent failed to grant an opportunity of hearing before enhancing the turnover from Rs.6,32,89,746/- to Rs.7,38,45,800/- without notice to the petitioner, the impugned orders are liable to be set aside.

8.Accordingly, by setting aside the impugned orders, this court remits the matter back to the respondent to re-consider the same afresh on merits, after giving an opportunity of personal hearing to the petitioner.

9. With this direction, both the writ petitions are allowed. Consequently, the connected M.Ps.are closed."

3. In the light of the above, these writ petitions are also allowed and the impugned orders are set aside. The matter is remanded to the first respondent, to re-consider the same on merits, after affording an opportunity of personal hearing to the petitioner. No costs Connected miscellaneous petitions are closed.

4. It is submitted by the learned counsel for the petitioner that in respect of the earlier assessments, i.e. for the year 2007-08 and 2008-09, though the impugned orders were set aside and the matter was remanded, in the above referred writ petitions, the matter is still pending consideration before the first respondent. Therefore, the first respondent shall consider all the matters together and pass a speaking order.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1.The Assistant Commissioner (CT),
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2.The Deputy Commissioner (CT) Zone VIII,
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3.The Joint Commissioner, (CT)
East Division,
PAPJM Buildings, Greams Road,
Chennai-600 006

+1 cc to Mr.V.Sundareswaran Advocate sr 61480
+1 cc to the Special Government Pleader(Taxes) sr 61550

W.P.Nos.29845 to 29847 of 2016

gjII(co)

aa25/11/2016