IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30867 to 30873 of 2016
& W.M.P.Nos.26728 to 26733 of 2016

1 TVL.K.K.S. & CO.
REP BY ITS PARTNER K.SELVARAJ
SALEM DISTRICT. ... PETITIONER in WP No.30867 of 2016

2 TMT.S.GEETHA
SALEM (DT) ... PETITIONER in WP No.30868 of 2016

3 A.SELVAM
SALEM (DT) ... PETITIONER in WP No.30869 of 2016

4 N.SELVAM & CO
REP BY ITS PARTNER S.SELVAM
SALEM (DT) ... PETITIONER in WP No.30870 of 2016

5 TVL.K.CHINNAPPAN & SONS
REP BY ITS PARTNER C.PALANISAMY
SALEM (DT) ... PETITIONER in WP No.30871 of 2016

6 TVL.K.EZHILARASAN CONTRACTORS
SALEM (DT) ... PETITIONER in WP No.30872 of 2016

7 TVL.K.P.S.ENGG. CONSTRUCTIONS
REP BY ITS PROPRIETOR S.THIAGARAJAN
SALEM (DT) ... PETITIONER in WP No.30873 of 2016

Vs.

The Assistant Commissioner (CT)
Omalur Assessment Circle
Omalur
Salem District. ... Respondent in W.P.No.30867 to 30873/2016

Prayer in W.P.No.30867 of 2016: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari (i)calling for the records on the files of the respondent in TIN 33663243069/2012-13 dated 20.4.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another).

(ii)calling for the records on the files of the respondent in TIN 33903247205/2012-13 dated 29.6.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another) (W.P.No.30868/16)

(iii)calling for the records on the files of the respondent in TIN 33723246334/2012-13 dated 28.5.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another)(WP No.30869 of 2016)

(iv)calling for the records on the files of the respondent in TIN 33963243098/2012-13 dated 11.6.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another)(WP No.30870 of 2016)

(v)calling for the records on the files of the respondent in TIN 33433244117/2012-13 dated 7.7.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another) (WP No.30871 of 2016)

(vi)calling for the records on the files of the respondent in TIN 33123243269/2012-13 dated 11.6.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another)
(WP No.30872 of 2016)

(vii)calling for the records on the files of the respondent in TIN 33693243295/2012-13 dated 11.6.2015 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgment reported in (2007) 295 ITR 303 (Mad) (V. Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another)(WP No.30873 of 2016)

For Petitioners: Mr.R.Senniappan

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

COMMON ORDER

Heard Both. By consent, the writ petitions are taken up for final disposal.

2. The petitioners, who are registered contractors of various Government Departments and who are registered dealers on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, have filed these writ petitions, challenging the orders of assessment for 2012-13.

3.Two grounds have been raised by the learned counsel for the petitioners. First is that the impugned orders have been passed without affording an opportunity of personal hearing. In support of his contention, reliance has been placed on the decision of the Hon'ble Division Bench of this Court in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another [(2007) 295 ITR 303].

4. The second ground raised by the learned counsel for the petitioners is that the petitioners had filed monthly returns and also paid tax and after due verification, the previous incumbent, who was functioning as the Assistant Commissioner (CT), Omalur Assessment Circle, was satisfied with the returns and issued certificates under Form S. However, the respondent erroneously observed in the impugned orders that no monthly returns have been filed and that the petitioners have not reported the turnover liable to tax.

5. In the light of the fact that the petitioners have not been afforded an opportunity of personal hearing as mandated and as pointed out by the Hon'ble Division Bench in the above referred to decision, this Court is of the view that the matters should be decided afresh after due opportunity to the petitioners.

6. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioners. While doing so, the respondent shall verify as to the correctness of the submissions made by the petitioners that they filed returns and paid taxes and that the officer concerned, having been satisfied with the same, had issued the certificates under Form S. The respondent can call for the entire files relating to the petitioners and thereafter proceed in accordance with law. The petitioners are at liberty to exercise their option under Section 6 of the said Act, which shall also be considered on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Omalur Assessment Circle
Omalur
Salem District.

+1cc to the Special Government Pleader Sr.50186
+1cc to Mr.R.Senniappan, Advocate Sr.50010

W.P.Nos.30867 to 30873 of 2016

mp 1[co]
srg 13/10/2016