IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.34981 to 34988 of 2016

and WMP.Nos.30175 to 30182 of 2016

W.P.No.34981 of 2016

M/s.Aspen Infrastructures Ltd.,
[Formerly known as Synefra Engineering and Constructions Ltd.]
Rep by P.Mohana Rao,
Assistant General Manager [SEZ Compliances],
Annur Road, Karumathampatti,
Coimbatore-641 659. .. Petitioner in all Wps.

Vs

The Assistant Commissioner [CT],
Chepauk Assessment Circle,
Annexure to PAPJM Buildings,
No.1, Greams Road, First Floor,
Chennai-6. .. Respondent in all Wps.

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records on the file of the respondent in TIN.33221883371/2007-08 ,2008-09,2009-10,2011-12,2007-08,2008-09,2009-10, and 2011-12, respectively dated 31.08.2016 and quash the same.

For Petitioner : Mr.N.Sri Prakash
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.N.Sri Prakash, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent, who is assisted by Mr.D.Balamurugan, Assistant

Commissioner, Chepauk Assessment Circle, who has appeared before the Court and also produced the files.

2. When the case came up for admission, this Court, to enable the learned Government Advocate to get appropriate instruction, passed the following order :

> " Heard the learned counsel for the petitioner.
>
> 2. Though larger issues have been canvassed in these writ petitions, by challenging the orders of assessment for the years 2007-08 to 2009-11 and 2011-12 as against tax due and levy of penalty on the alleged belated payment of tax for the same assessment years, the short question, which requires to be considered, is as to whether the petitioner had received pre-revision notices and the reminder notices. One other aspect, which is to be considered is as to whether the respondent was justified in completing the assessment without referring to the fact that the petitioner was furnished with the true copies of the notices dated 26.2.2016 only on 5.8.2016 and in this regard, there is no record to the furnishing of true copies of the notices.
>
> 3. The learned counsel for the petitioner, on instructions, would also submit that the petitioner would be in a position to effect payment of reasonable amount of disputed tax without prejudice to their rights to enable them to have an opportunity to go before the Assessing Officer.
>
> 4. Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent and seeks time to get instructions.
>
> 5. List on 06.10.2016 at the end of motion list."

3. Pursuant to it, the Assessing Officer is present in Court and he produced the original assessment files. From the perusal of the assessment files, it is evidently clear that the petitioner has received the copies of the notices and therefore to that extent, the stand taken by the petitioner needs to be rejected. However, taking note of the fact that the assessment has been completed ex-parte and the intercusies involved in the assessment proceedings, owing to the fact that the petitioner had sought for denotification of a part of the area for which, they had been processed by the Development Commissioner. This has resulted in certain ramifications and it is not in dispute that insofar as the area, which is sought to be denotified and whatever benefits, which had accrued to the petitioner by virtue

of the notification has been paid by the petitioner. However, the Assessing Officer has levied interest on such payment, which is subject matter of challenge in W.P.Nos.34985 of 2016 and 34988 of 2016.

4. Prima facie, this Court is of the view that demand for the interest on the said amount may not be justified, since it is a demand raised on the petitioner as a consequence upon the request for denotification, which is in process. Therefore, the payment effected by the petitioner, pursuant to a demand raised by the Assessing Officer cannot be construed as a belated payment of tax. However, this issue shall be decided by the Assessing Officer on remand.

5. So far as the other Writ Petitions namely, W.P.Nos.34981 to 34984 of 2016, they are challenging the Assessment Orders for the years 2007-08, 2008-09, 2009-10 and 2011-12 under the Tamil Nadu Value Added Tax, 2006 and the learned counsel for the petitioner, after having been convinced that the petitioners have received the notices, would submit that the petitioner may be granted one more opportunity to go before the assessing officer and substantiate their case.

6. Considering the over all facts and circumstances of the case, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer subject to certain conditions. Accordingly, W.P.Nos. 34981 to 34984 of 2016 are disposed of with the following direction:

> The petitioner is directed to pay 15% of the disputed tax for all the four Assessment Years within a period of two weeks from the date of receipt of a copy of this order. On such remittance, the petitioner is granted 15 days time to submit their objections to the proposal made by the respondent and on receipt of the objections, the respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law.

7. Insofar as W.P.Nos.34985 to 34988 of 2016 are concerned, since this demand for interest was also without adequate opportunity to the petitioner and considering the prima facie finding recorded by this Court in the preceding paragraph on this aspect, this Court is of the considered view that the said proceedings also should be re-done taking note of the observation made by this Court. Accordingly, W.P.Nos.34985 to 34988 of 2016 are allowed and the impugned demands are set aside and the matter is remanded to the respondent with a direction to the petitioner to submit their objections, within a period of 15 days from the date of receipt of a copy of this order and on

receipt of the objections, the respondent shall consider the same by affording an opportunity of personal hearing, at the time when the assessments for the years 2007-08, 2008-09, 2009-10 and 2011-12 under the Tamil Nadu Value Added Tax, 2006 are re-done in terms of the directions in W.P.Nos.34981 to 34984 of 2016. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To
The Assistant Commissioner [CT],
Chepauk Assessment Circle,
Annexure to PAPJM Buildings,
No.1, Greams Road, First Floor,
Chennai-6.

+1cc to Mr. N. Inbarajan, Advocate, S.R.No.57496
+1cc to the Spl.Government Pleader (Taxes), S.R.No.57732

sai (CO)
md (10/11/2016)

WP.Nos.34981 to 34988 of 2016 and
WMP.Nos.30175 to 30182 of 2016