In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.36662, 36689 and 36798 of 2016
& WMP.Nos.31519, 31537 and 31563 of 2016

S.A.Palanisamy, Managing Partner,
Sri Kumaran Bore-Wells ...Petitioner in all the WPs

Vs

The Commercial Tax Officer,
Perundurai Assessment Circle,
Perundurai-638052. Erode
District, Tamil Nadu. ...Respondent in all the WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent pursuant to the orders dated 30.6.2016 in TIN No.33632924101 respectively for the years 2012-13, 2013-14 and 2011-12, quash the same and direct the respondent to pass an appropriate order based on the meaning provided by virtue of the provisions contained in the Tamil Nadu Value Added Tax Act, 2006 and its Rules 2007 subject to his jurisdiction and if necessary, to call upon the petitioner for any further required documents in connection with the assessment proceedings respectively for the years 2012-13, 2013-14 and 2011-12, giving sufficient and reasonable opportunity to the petitioner and pass appropriate orders.

For Petitioner : Mr.T.Sundar Rajan
For Respondent : Mr.K.Venkatesh, GA

COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In all these writ petitions, the petitioner has challenged the orders of assessment dated 30.6.2016 for the years 2011-12, 2012-13 and 2013-14.

3. Several factual contentions have been raised by the petitioner stating that the respondent has erroneously assessed labour charges for the purpose of arriving at the total and taxable turnover of the petitioner. On receipt of the revision notices dated 25.3.2015, the petitioner submitted his reply dated 21.9.2015. On considering the reply, the Assessing Officer was of the view that the petitioner has not produced any evidence as to the nature of the contract to prove that no transfer of property is involved in the execution of the contract and that the petitioner had not produced the agreement copies of contract for the works executed by them for the Tamil Nadu Water and Drainage Board so as to ascertain the nature of contract and the goods, which were transferred in the execution of such contracts.

4. Thus, in the absence of documents being produced by the

petitioner, this Court cannot, now, convert itself into an Appellate Authority and examine as to the nature of transaction between the petitioner and the Tamil Nadu Water and Drainage Board and ascertain as to whether there was any transfer of property involved in the execution of works contract. This exercise can be done only by the Appellate Authority under the provisions of the said Act, since, as against the impugned orders, an appeal lies to the Appellate Deputy Commissioner (CT), Erode. However, the petitioner has not been diligent enough to prosecute such appeal remedy and approached this Court by filing these writ petitions much after expiry of the the period of limitation for filing the appeals.

5. However, considering the fact that the respondent is attempting to initiate revenue recovery proceedings against the petitioner, this Court is inclined to grant 30 days' time to the petitioner to file appeals before the Appellate Deputy Commissioner (CT), Erode, who shall entertain the appeals without reference to the question of limitation. Till the appeals are filed and the petitioner moves for stay before the Appellate Authority, the respondent shall not initiate any coercive action pursuant to the attachment notices dated 19.9.2016.

6. With the above directions, the writ petitions are disposed of. No costs. Consequently, the above WMPs are closed.

20.10.2016

RS

T.S.SIVAGNANAM,J

RS

Internet : Yes

To
The Commercial Tax Officer, Perundurai Assessment Circle, Perundurai-638052. Erode District, Tamil Nadu.

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