In the High Court of Judicature at Madras

Dated : 25.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.40628 to 40630 of 2016
and
WMP.Nos.34625 to 34627 of 2016

Vicons Constructions [P] Ltd.,
rep.by its Director A.Francis Sekarraja
3A, 3rd Floor, 40/12, Jeyamkondar
Apartments, Murrays Gate Road,
Chennai 600 018. ...Petitioner in all WPs

Vs

The Commercial Tax Officer,
Nandanam Assessment Circle
No.48, Pasumpon Muthramalingadevar
Salai, Chennai 600028. ... Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent contained in its order dated 13.10.2016 and 18.10.2016, respectively bearing TIN/33111542428/2011-12 ; TIN/33111542428/2012-13 ; TIN/33111542428/2010-11 and to quash the same

For Petitioner in
all the writ petitions :Mr.Suhirth Parthasarathy

For Respondent in
all the writ petitions :Mr.S.Kanmani Annamalai
Addl. Government Pleader

COMMON ORDER

Heard Mr.Suhirth Parthasarathy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent and with their consent, the writ petitions itself are taken up for final 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 as well as under the provisions of the Karnataka Value Added Tax Act. In these writ petitions, the petitioner has challenged the orders of assessment dated 13.10.2016 and 18.10.2016 for the assessment years 2011-2012 ; 2012-2013 and 2010-2011 respectively. The only ground on which the impugned order has been questioned by contending that while completing the assessment, there were four issues were pointed out by the respondent and issue No.3 viz., reversal of ITC for the purchase of goods from registration cancelled dealer and issue No.4 viz., reversal of ITC difference in purchase with reference to Annexure I of purchasing dealer and Annexure - II of selling dealers does not pertain to the petitioner but this pertains to another company and on those two issues, there was no notice issued to the petitioner to controvert the same. In this regard, the learned counsel for the petitioner referred to the notice dated 12.08.2016. On a perusal of the same, it is seen that there was a proposal to reverse the Input Tax Credit only on two issues viz., income received on hire charges and tax on contract receipts.

3.When the matter came up for admission before this Court on 17.11.2016, the above submission was recorded and the learned Government Advocate was directed to get instructions from the Assessing Officer.

4.The learned Additional Government Pleader, who is appearing today, submitted that the Assessing Officer has given instruction from which, it is seen that so far as issue Nos.3 and 4 noted above, do not pertain to the petitioner but pertains to their sister company which registered dealer having separate TIN number. This is sufficient to hold that the assessment under issues Nos.3 and 4 have to be set aside. With regard to issue Nos.1 and 2 viz., "income received on higher charges and tax on contract receipts", is concerned, the petitioner pleads that one more opportunity may be granted to the petitioner to produce necessary documents to substantiate their claim. This Court is of the considered view that the request is reasonable because in any event, the assessment order has to be set aside and the matter has to be remanded for fresh consideration.

5.Accordingly, the writ petitions are allowed and the impugned orders are set aside and the matter is remanded for fresh consideration and the petitioner is given fifteen days time to file additional documents before the Assessing Officer who shall consider the same and afford an opportunity of personal hearing and redo the assessment.

6.In W.P.No.40629 of 2016 which pertains to the assessment year 2012-2013, the only issue which arises for consideration is with regard to the tax on contract basis. A perusal of the impugned assessment order dated 18.10.2016 shows that the report of the Enforcement Wing Officials has weighed in the minds of the Assessing Officer. In any event, in respect of the assessment years 2011-2012 and 2010-2011, this Court has remanded the matter for fresh consideration. Therefore, this Court is of the view that even for the assessment year 2012-2013, the petitioner can be afforded an opportunity to explain the nature of transaction.

7.Accordingly, W.P.No.40629 of 2016 is allowed and the impugned order dated 18.10.2016 is set aside. The petitioner is granted fifteen days time to file their objections and on receipt of the objection, the respondent shall afford an opportunity of personal hearing and re-do the assessment.

8.In the result, W.P.Nos.40628 and 40630 of 2016 are allowed with directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

The Commercial Tax Officer,
Nandanam Assessment Circle
No.48, Pasumpon Muthramalingadevar
Salai, Chennai 600028.

+2cc to Mr.Arun kumar, Advocate, S.R.No.69336
+1cc to the Government Pleader, S.R.No.69231

lrs(CO)
md(02/01/2017)