IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2016

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.Nos.40936 to 40938 of 2016

and WMP Nos.34905 to 34907 of 2016

and WMP Nos.37573 to 37575 of 2016

Alstom Transport India Limited,
represented by Tax Manager,
Mr.Arun Prasad,
SF No.41/1 B1 and 41/2-A,
Kangeyampalayam Village,
Sulur Taluk,
Coimbatore – 641 401. ... Petitioner in all the WPs

vs.

1. Commercial Tax Officer,
   Palladam Circle,
   Palladam.

2. Assistant Commissioner (CT),
   Royapettah Assessment Circle,
   Chennai-600 028. .. Respondents in all the WPs

Prayer in W.P.No.40396 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, or any other appropriate writ, order or direction calling for the records on the files of the first respondent herein in TIN No.33171802452/2013-2014, dated 03.11.2016, and quash the same.

Prayer in W.P.No.40397 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, or any other appropriate writ, order or direction calling for the records on the files of the first respondent herein in TIN No.33171802452/2014-2015, dated 03.11.2016, and quash the same.

Prayer in W.P.No.40398 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, or any other appropriate writ, order or direction calling for the records on the files of the first respondent -herein in TIN No.33171802452/2015-2016, dated 26.10.2016, and quash the same.

For Petitioner in all the writ petitions	:	Mr.N.Sriprakash
For Respondents in all the writ petitions	:	Mr.K.Venkatesh, Government Advocate

COMMON ORDER

1. The captioned writ petitions assail three (3) separate orders passed by respondent No.1.

1.1. In W.P.No.40936 of 2016, the order dated 03.11.2016, is assailed; in W.P.No.40937 of 2016, the order assailed is also dated 03.11.2016; and lastly, in W.P.No.40938 of 2016, the order assailed is dated 26.10.2016.

2. To be noted, two (2) separate orders of even date, i.e., 03.11.2016, pertain to the Assessment Year (in short "AY") 2013-2014 and 2014-2015, while the order dated 26.10.2016 pertains to the AY 2015-2016.

3. By virtue of the impugned order, the petitioner has been called upon to pay tax and interest qua each of the AYs by respondent No.1, in exercise of revisionary power under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 (in short the Act). For the sake of convenience, the details of tax and interest, as reflected in the impugned orders, are set out hereinbelow :

Sl. No.	AY	Date of the impugned order	Tax	Interest
1	2013-2014	03.11.2016	Rs.3,13,60,919/-	Rs.1,97,50,586/-
2	2014-2015	03.11.2016	Rs.47,69,016/-	Rs.19,65,883/-
3	2015-2016	26.10.2016	Rs.4,01,69,630/-	Rs.91,26,570/-

4. The grievance of the petitioner is that respondent No.2 misdirected himself, both in law and on facts, in passing the

impugned orders, particularly, for the following reasons :

(i) Respondent No.1 has proceeded on the basis that, since, tax at source was deducted by Chennai Metro Rail Limited (in short "CMRL"), albeit, at a lesser rate, the differential amount was not only required to be recovered from the petitioner, but that the consequences of short collection should fall on the petitioner. In this context, it is stated that respondent No.1, has held that since, the contract between the petitioner and CMRL is a contract other than civil works contract, withholding tax had to be collected at the rate of 5% and not at the rate of 2%, as was done in the instant case.

(ii) Respondent No.1 has committed a mistake in law in assuming that because, as alleged, TDS was deducted by CMRL at a lesser rate, the petitioner had not paid the tax, which was due and payable under the Act. For this purpose, the petitioner relies upon the communication dated 27.10.2016, which is addressed to respondent No.1. Reliance in this behalf is placed on Section 13 of the Act.

(iii) The only person, who would be liable for the alleged failure in short collection of withholding tax would be CMRL and not the petitioner.

(iv) Since, the allegation is that the petitioner has been charged tax at a rate lower than the rate at which, it should have been charged, respondent No.1 could have invoked, if at all, the provisions of Section 27(1)(b) of the Act, whereas, recourse has been taken, albeit, erroneously, by respondent No.1 to the provisions of Section 27(1)(a) of the Act, which deals with turnover, which has escaped assessment.

(iv)(a). I may only note, here, that, the learned counsel for the petitioner says that this submission is made in the alternative, though, factually, the petitioner has disclosed his entire taxable turnover and paid the requisite taxes.

5. On the other hand, Mr.Venkatesh, learned Government Advocate, who appears for the respondents, says that the communication dated 27.10.2016, was obviously received by respondent No.1, after order dated 26.10.2016, was passed by him, qua the AY 2015-2016. It is, therefore, the submission of the learned counsel for the respondents that the facts stated therein will have to be enquired into, which is, whether or not the petitioner, firstly, declared the entire taxable turnover, and thereafter, paid the entire tax, as contended by it.

5.1. Mr.Venkatesh, says that, if, tax is paid, as contended, then, obviously, no tax liability would lie on the petitioner. It is in this context that the learned counsel contends that this matter, would have to be re-examined by respondent No.1.

6. I have heard the learned counsel for the parties.

7. According to me, learned counsel for the petitioner has

rightly contended that liability under Section 13 of the Act would fall on CMRL and not on the petitioner. Therefore, consequences, if any, that flow from shortfall in the collection of withholding tax can only be visited upon, if at all, on CMRL.

8. Therefore, in my view, respondent No.1 proceeded on a wrong basis and completely misdirected himself in law.

9. Having said so, the stand taken by the petitioner before me that the entire taxable turnover had been disclosed, and that, requisite tax had been paid, notwithstanding the short collection of tax at source by CMRL, is an aspect, which would, perhaps, need to be enquired into.

9.1. Therefore, the assessment orders passed by respondent No.1, which are assailed in the captioned writ petitions are set aside.

9.2. Respondent No.1 will redo the assessments, after giving due opportunity to the petitioner. Before proceeding further, respondent No.1 will not only issue a written notice to the petitioner, but would also afford a personal hearing in the matter to the authorised representative of the petitioner.

10. With the aforesaid directions, the writ petitions and the connected applications are closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gg
To

1. The Commercial Tax Officer,
Palladam Circle, Palladam.

2. The Assistant Commissioner (CT),
Royapettah Assessment Circle,
Chennai-600 028.

+1cc to Mr.N. Inbarajan, Advocate, S.R.No.74555
+1cc to the Special Government Pleader, S.R.No.74486

nmi(CO)
md(19/01/2017)

W.P.No.40936 to 40938 of 2016