IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.42086 to 42095/2016 and
WMP.Nos.35995 to 36004/2016

M/s.Reinforced Earth India Private Limited
rep. by Deepak Saklani,
Deputy Manager-Finance and Account - Taxation
and Authorized Signatory,
Head Office at E.11, Block-B1 Extension,
(Opposite NTPC Badarpur),
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi-110 044. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Nandambakkam Assessment Circle,
   No.17, Loganathan Street,
   Choolaimedu, Chennai-94.

2. The Assistant Commissioner (CT),
   Alandur Assessment Circle,
   Chennai. ...Respondents 1 & 2 in WP.42086 to 42090/16 and Respondents in 42091 to 42096/16

3. The Joint Commissioner (CT),
   Chennai (South) Division,
   PAPJM Buildings, Greams Road,
   Chennai-6. ...3rd Respondent in WP.42086 to 42090/16

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari

i) to call for the impugned proceeding of the 1st respondent in TIN/33410843960/2006-2007 2007-2008, 2008-2009, 2009- 2010, & 2010-2011, (WP.Nos.42086 to 42090/16) and dated 5.10.2016 and quash the same as passed contrary to the provisions of the TNVAT Act and also in violation of the principles of natural justice.

ii) to call for the impugned proceeding of the first respondent in TIN/33410843960/2006-2007 2007-2008, 2008-2009, 2009-2010 & 2010- 2011, (WP.No.42091 to 42095/16) respectively dated 05.10.2016 and quash the same as passed without authority of law and also contrary to law declared by the Division Bench of the Hon'ble Madras High Court in the case of Deputy Commissioner(CT) Coimbatore Vs V.S.R.Ramaswami Chettiar and Bros reported in 38 STC 382 followed by the Hon'ble Madras High Court in the case of Rainbow Foundations Ltd Vs Assistant Commissioner (CT)(FAC), T.Nagar(South) Assessment Circle reported in 37 VST 592.

For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.K.Venkatesh, Government Advocate

COMMON ORDER

Heard Mr.P.Rajkumar, the learned Counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate appearing for the respondents and with the consent on either side, the Writ Petitions are taken for disposal.

2. All these Writ Petitions have been filed by the petitioner, challenging the assessment orders for the years 2006-07 to 2010-11 under the provisions of the Tamil Nadu Value Added Tax, 2006 (TNVAT) Act. Since common issue is involved in all these writ petitions, they were heard together and are disposed of by this common order.

3. The learned Government Advocate has also received instructions from the 1st respondent.

4. The petitioner is a dealer, registered under the provisions of the Tamil Nadu Value Added Tax, 2006 and also under the Central Sales Tax Act, originally, before the 2nd respondent. Subsequently, on reorganisation of the department, the files relating to the petitioner stood transferred to the jurisdiction of the 1st respondent. The impugned orders in these writ petitions are orders of revision of assessment under the TNVAT Act exercising powers under Section 22(5) of the TNVAT Act for the relevant assessment years.

5. The impugned orders have not been questioned on factual grounds, but, only on the ground that they are without jurisdiction on account of certain peculiar facts and circumstances. The impugned orders have been passed by referring to a notice dated 12.01.2016. Admittedly, the said notice was not issued by the 1st respondent nor received by the petitioner. Nevertheless, the respondent proceeded to state

that the notice was sent to the petitioner, but, returned with an endorsement that the addressee has left the place.

6. The petitioner's case is that for the very same assessment years, the 2nd respondent the Original Assessing Officer has completed the assessments and since there were certain errors in the said orders, the petitioner filed petitions to rectify the orders of assessment by invoking Section 84 of the TNVAT Act. The said petitions were dismissed by an order dated 23.02.2015, since the petitioner's authorized representative did not appear before the 2nd respondent. These orders were put to challenge by the petitioner in W.P.Nos.34093 to 34102 of 2016 and the said writ petitions were disposed of by a common order dated 28.09.2016 by setting aside the orders passed by the Revisional Authority subject to condition that the petitioner remits a sum of Rs.4,00,000/- (Rupees Four Lakhs Only) towards the disputed interest, within a period of three weeks and on such compliance of the said condition, the matters were remanded back to the Joint Commissioner (CT), Chennai (South) Division, PAPJM Buildings, Greams Road, Chennai-6 and that the copy of the order has been received by the petitioner only yesterday and the petitioner shall comply with the order.

7. In the instant cases, the impugned orders are parallel proceedings which have been initiated by the 1st respondent in respect of the same assessment years over which the 2nd respondent has already passed orders.

8. When the case came up for admission, this Court directed the learned Government Advocate to get instructions as to whether the 1st respondent is aware of the fact that already for the same assessment years, orders have been passed by the 2nd respondent.

9. The 1st respondent has informed that the files do not disclose the facts nor he was apprised of the same and therefore, unaware about the earlier orders passed by the 2nd respondent. Thus, taking into account all the above facts and circumstances, the impugned orders call for interference.

10. Accordingly, the Writ Petition Nos.42086 to 42090 and 42092 to 42095 are allowed and the impugned orders are set aside and the matters are remanded to the 1st respondent for fresh consideration. To avoid any future issues in these matters, there will be a direction to the 2nd respondent to transmit the files concerning the petitioner to the 1st respondent and on receipt of the same, the 1st respondent, after making thorough study of the entire proceedings, shall proceed in accordance with law.

11. The petitioner has also filed W.P.No.42091/2016 wherein they have challenged the order passed by the 2nd respondent imposing penalty upon the petitioner by way of a separate order. This is challenged on several grounds, in particular, that an order of penalty cannot be passed separately by a separate order, that too, invoking Section 22(5) of the TNVAT Act.

12. To support such contention, the learned Counsel for the petitioner referred to a decision of the Hon'ble Division Bench of this Court in the case in The Deputy Commissioner (C.T.), Coimbatore v. V.S.R.Ramaswami Chettiar and Brothers reported in (1976) 38 STC 382 which has been followed in the case of M/s.Rainbow Foundations Ltd. vs. Assistant Commissioner (CT) (FAC), T.Nagar (South) Assessment Circle, reported in 37 VST 592.

13. In any event, the order of assessment passed by the 1st respondent for the very same assessment years have been quashed by this Court on the grounds referred in the preceding paragraphs, therefore, this proceedings also required to be set aside. Accordingly, this Writ Petition in W.P.42091 of 2016 is also allowed and all the issues are left open. No costs. Consequently, connected Miscellaneous Petitions are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsi

To
1. The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Street,
Choolaimedu, Chennai-94.

2. The Assistant Commissioner (CT),
Alandur Assessment Circle,
Chennai.

3. The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, Greams Road,
Chennai-6.

+1 cc to Mr.P.Rajkumar Advocate sr 70739
+1 cc to Government Pleader(Taxes) sr 70723

W.P.Nos. 42086 to 42095/2016

aa23/12/2016