IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.42477 to 42481 of 2016
and
W.M.P.Nos.36370 to 36374 of 2016

M/s.Foundation one Infrastructure
Private Limited,
rep.by its authorized signatory,
R.Sankara Kumar ... Petitioner in all the W.Ps.

Vs.

The Commercial Tax Officer,
Trichy Road Circle,
Coimbatore-18 ... Respondent in all the W.Ps.

Prayer: Writ Petitions have been filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the respondent in TIN No.33571884100/2010-11, 2011-12, 2012-13, 2013-14, 2014-15, respectively and quash the order dated 28.10.2016, passed therein.

For Petitioner : Mrs.Hema Muralikrishnan in all the W.Ps.

For Respondents : Mr.K.Venkatesh, Government Advocate in all the W.Ps.

COMMON ORDER

Heard Mrs.Hema Muralikrishnan, the learned counsel for the petitioners and Mr.K.Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondent and with the consent of either side, the writ petitions are taken up for final disposal.

2.The controversy in all these writ petitions lies in a very narrow compass. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is engaged in the business of civil contract works. In these writ petitions, the petitioner has challenged the orders of assessment for the years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, only with regard to one issue, namely, the reversal of Input Tax Credit on the purchases effected from the sellers, who have not filed monthly returns. In respect of the other proposals, the petitioner has already paid the tax.

3. On receipt of the pre-assessment notices, the petitioner submitted their objections, giving the names of the dealers from whom they have effected purchases and without furnishing supportive documents, they stated that reversal of input tax credit cannot be done in the light of the decision of this Court in the case of Vinayaga Agencies vs. Assistant Commissioner (CT) Vadapalani-I Assessment Circle, Chennai and another, reported in (2013) 60 VST 283 (Mds).

4. The respondent, while completing the assessments pointed out that the department relies on the departmental website, which shows that the sellers, at the other end have either not filed the returns nor paid the tax dues and the petitioner has also not produced any documentary evidence to the effect that the sellers at the other end had filed returns and paid tax dues and in the absence of any documentary evidence, the proposal to reverse the input tax credit was confirmed. The respondent/assessing officer cannot be faulted for having taken such a stand, because at the first instance, the petitioner failed to discharge the obligation cast upon them in producing the documentary evidence to support their stand. However, this Court is of the view that instead of keeping the matter pending before this Court, which would be against the interest of Revenue, if the matter is remanded back to reconsider this issue afresh with a direction to the petitioner to produce documents, ends of justice would be met and the interest of the Revenue would also be protected.

5. In the light of the above observations, the writ petitions are partly allowed and the finding rendered by the assessing officer with regard to the reversal of input tax credit on the purchases effected by the sellers, who have not filed monthly returns/not paid taxes is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to produce all the documents to support their stand within a period of 10 days from the date of receipt of a copy of this order by appearing in person before the

respondent. The petitioner's authorised representative shall be heard in person and the respondent shall re-do the assessments under the said head within a period of three weeks, after personal hearing is concluded. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

The Commercial Tax Officer,
Trichy Road Circle,
Coimbatore-18.

+1cc to Mr.L.Muralikrishnan, Advocate, S.R.No.71503
+1cc to the Special Government Pleader(T), S.R.No.71515

W.P.Nos.42477 to 42481 of 2016

SCD(CO)
CA(29/12/2016)