BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).Nos.12174 to 12177 of 2016
and
W.M.P.(MD).Nos.9272 to 9275 of 2016

M/s.Kalpataru Power Transmission Ltd,
rep.by its Authorised Signatory,
Mr.Jeyendra Govindlal Shah,
2nd Floort, Bawa Building,
Kailasapuram North Street,
Tirunelveli Junction. ... Petitioner in all WPs

Vs

1.The Assistant Commissioner(CT),
Tirunelveli Junction Assessment Circle,
Tirunelveli.

2.The Appellate Deputy Commissioner (CT),
Tirunelveli. ... Respondents in all WPs

W.P.(MD).Nos.12174 to 12777 of 2016: Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in his proceedings in TIN No.33305563701/2012-13 and 2013-2014 and quash the order dated 17.03.2016 as it is unlawful and further direct the 1st respondent to grant an opportunity for adjudication and thereafter to pass order afresh in all perspective on its merits in terms of the decision of this Hon'ble Court reported in 9 VST 478/2007, 2007-9 VST 478(MAD), 9 VST-478 and 9 VST 478 & 60 VST 283 respectively.

For petitioner : M/s.R.D.Ganesan
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader (Taxes)

COMMON ORDER

Since the issue involved in all the Writ Petitions is one and the same, these matters are taken up together and disposed of, by this common order.

2. M/s.Kalpataru Power Transmission Ltd, represented by its Authorised Signatory, Mr.Jeyendra Govindlal Shah, Tirunelveli Junction, challenges the impugned orders, dated 17.03.2016, passed by the first respondent, on the ground that the notice, dated 25.05.2015 was not properly served on the petitioner-Company.

3. The petitioner-Company is an assessee on the file of the respondents. The first respondent herein issued a Notice under Section 27(4)(ii) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act') to the petitioner-Company. The notice indicates that the petitioner-Company has claimed Input Tax Credit (in short' ITC'), however, the first respondent rejected the said claim of the petitioner-Company. Aggrieved over the same, the petitioner-Company is before this Court.

4. Learned counsel for the petitioner would submit that the Orders impugned in all these Writ Petitions were served on one Manikandan, an employee in the petitioner-Company, who had not communicated the same to the petitioner-Company. As a result, no reply could be given by the petitioner-Company to the respondents, which resulted in confirming the proposal and also imposing penalty. Apart from that, the petitioner-Company was deprived of filing an appeal before the competent authority. He further submitted that the approach adopted by the first respondent is totally unacceptable in the light of Section 19 of the Act. According to him, the service of notice cannot be treated as a 'reasonable service'. He pleaded that, if a reasonable opportunity is given to the petitioner-Company, they will be able to substantiate the claim. In this regard, the learned Counsel brought to the notice of this Court, an Order, dated 23.04.2014, in W.P.(MD).Nos.6337 to 6340 of 2014, wherein, this Court, after considering a similar issue, directed the petitioner therein to deposit 50% of the tax amount payable. Hence, he prayed for a similar direction in all these Writ Petitions.

5. Per contra, learned Additional Government Pleader submitted that the petitioner-Company is a private Limited Company. Notice was duly served as per Section 19 of the Act. The petitioner disputes the 'service of notice' only on technical ground that it was served only their employee and not directly on the petitioner-Company. Such contention cannot be countenanced in the eye of law. Therefore, the petitioner cannot plead ignorance that notice was not served to them at all. So submitting, he pleaded for dismissal of the Writ Petitions.

6. Considered the rival submissions made on either side and perused the materials available on record.

7. As rightly pointed out by the learned Additional Government Pleader, the petitioner-Company cannot make an innocuous plea that the Notice was served only on their employee and not directly on them. The petitioner-Company being a Private Limited Company, should be more responsible and not to take a pedantic approach. At this juncture, it is more relevant to extract Rule 19 of the Act:-

"19. Service of notices, summons or orders..(1) The service on a dealer of any notice, summons or order under the Act or these Rules may be effected either electronically or manually in any of the following ways, namely:-

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his a**uthorised representative**; or

....."

8. In the case on hand, admittedly, the notice dated 25.05.2015 was served on Manikandan, who is none else than an employee of the petitioner-Company. Therefore, the petitioner cannot take a superficial claim that the Notice was served only on their employee and not on the petitioner-Company. In the above extract Rule itself, it is made clear that the Notice can be served upon the authorised representative. While so, if the present contention of the petitioner-Company is accepted, then, every company will raise a similar claim that Notice was served only on their clerk, assistant etc., thereby, the 'notice of service' as provided even as per the Rule would become impracticable. Therefore, this Court has no option but to dismiss all the Writ Petitions in limine.

9. At this juncture, learned counsel for the petitioner-Company pleaded that at least liberty may be given to the petitioner-Company to prefer Appeals, as they have got a good case on merits. Since the State suffers from shortage of electricity, this Court is unable to resist the prayer made in these Writ Petitions. Therefore, the petitioner-Company is directed to pay 50% of the disputed tax in each of the Writ Petitions, within a period of two weeks from the date of receipt of a copy of this order. On such payment, the petitioner-Company is permitted to file an appeal before the respondents within a period of two weeks from the date of payment. If any such appeal is filed within the stipulated time fixed by this Court, the competent authority shall take up the appeals and dispose of the same, within a period of four weeks from the date of receipt of the appeal to be filed by the petitioner-Company. It is made clear that this Court has not touched upon the merits involved in these Writ Petitions. In other words, it is open to the concerned respondent to go into the merits of the matters and pass appropriate orders, on merits and in accordance with law.

10. If the conditional amount, as stated in the Writ Petitions is not paid by the petitioner-Company within the time stipulated by this Court, it is open to the respondents to proceed against the petitioner-Company, as per the notice impugned in all the Writ Petitions. Needless to mention that while entertaining the appeals, the respondents shall not touch upon the point of

limitation, as this Court has entertained the Writ Petitions. Further, this matter shall not be taken as a precedent in future cases.

11. With the above directions, all the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To

1.The Assistant Commissioner(CT),
Tirunelveli Junction Assessment Circle,
Tirunelveli.

2.The Appellate Deputy Commissioner (CT),
Tirunelveli.

+4cc to M/s.R.D.Ganesan, Advocate SR.No.35959 to 35962

+1cc to Special Government Pleader SR.No.36129

SSM

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W.P(MD).Nos.12174 to 12177 of 2016

12.07.2016