IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8365 of 2017
and
W.M.P.No.9123 of 2017

M/s.ITDC Cementation India Limited
Represented by its General Manager Mr.Milind Suresh Vadhavkar,
Pearl Glow Building, I Floor,
No.3, Vijayaraghava Road,
T.Nagar, Chennai-17. ...Petitioner

Vs.

1.The Joint Commissioner (CT)
Chennai East Division
Chennai-6.

2.M/s.Shandong Tiejun Electric Power Engineering Company Limited
IL&FS, Cuddalore Project Site, Near Kothttai & Ariyagoshti Village,
Chidambaram Taluka, Cuddalore,
Tamil Nadu - 608 502.

3.The Commercial Tax Officer
Chidambaram I Assessment Circle.

4.The Assistant Commissioner (CT)
T. Nagar Assessment Circle,
Chennai-600 017. ...Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in the communication of the first respondent with the reference RC.No.381/2015/A6 dated 20.02.2015, quashing the same and direct the first respondent to consider the submissions of the petitioner and to afford an opportunity of personal hearing.

For Petitioner :Mr.Mohammed Shaffiq

For Respondents:Mr.S.Kanmani Annamalai
Additional Government Pleader(Tax)

O R D E R

The petitioner is aggrieved against the communication of the first respondent dated 20.02.2015, wherein and whereby, the petitioner's request was rejected on the reason that they were not a party in the WP.Nos.26148 of 2014 batch etc.,

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondents.

3. The petitioner is engaged in executive works contract and is a registered dealer on the file of the fourth respondent. The principal contractor of the petitioner had deducted TDS at the rate of 2% on the payments made by the petitioner, treating the work done by the petitioner as civil works. It is stated that the petitioner had also paid the tax in addition to the TDS deduction made by the contractor. However notice was sent to the contractor on 03.04.2014 proposing to treat the works contract between the petitioner and the contractor as not being a "Civil Work" and to bring the same under the residuary clause viz., "other works contract". Consequently, an order of assessment dated 28.04.2014 was passed by confirming the proposal. It is stated that while the contractor filed a revision under Section 54 of the Tamil Nadu Value Added Tax, Act, challenging the order of assessment, another contractor namely M/s. Simplex Infrastructure Limited, had filed writ petitions before this Court in WP No.22749 to 22754 of 2014, challenging the assessment order. It is further seen that this Court, by an order dated 09.12.2014, passed a common order and allowed those writ petitions with a direction to re-hear the matter, after issuing notice to the other suppliers / employers. Therefore, the petitioner herein presented the objections on 16.02.2015 and the said objections were rejected by the first respondent only on the reason that the petitioner is not a party in the above writ petitions.

4. The learned Additional Government Pleader (Tax) on instructions submitted that in pursuant to remand made by this Court as stated supra, the proceedings are still pending before the first respondent.

5. The learned counsel appearing for the petitioner pointed out that when this Court has extended the scope of the enquiry before the first respondent and permitted the other suppliers / employers also to take part in such proceedings, the first respondent is not justified in rejecting the request of the petitioner.

6. Upon hearing the learned counsel on either side and perusing the materials placed before this Court, this Court is of the view that the first respondent is not justified in rejecting the request of the petitioner only on the reason that the petitioner-company is not a party to the writ proceedings in WP Nos.26749 to 22754 of 2014, especially when the order passed by this Court in the above writ petitions along with other batch of case, clearly indicates that the other suppliers / employers are also to be issued with notice and thereafter, the first respondent has to hear and take a comprehensive decision.

7. Para 19 & 20 of the said order are extracted hereunder for better appreciation:

> "19. In the result, W.P.Nos.22749 to 22754 of 2014 are allowed with direction. W.P.Nos.26148, 26164, 26190 to 26192, 26347, 26348 of 2014 and W.P.No.30119 of 2014 are disposed of on the above terms. No costs. Connected MPs are closed.
> 20. Learned Senior counsel appearing for the petitioners submitted that in W.P.Nos.26148, 26347 and 26348 of 2014, 26164 of 2014, 26190 to 26192 of 2014, the deductor / employer has filed these writ petitions challenging the pre-revision notice issued in respect of four assessment years pertaining to the deduction of the rate of TDS in respect of 11 suppliers to the said employer, however, one such employer is Gita Power, the petitioner in W.P.Nos.26148, 26347 and 26348 of 2014 and there are other suppliers, who are necessarily to be issued with notice. Learned Special Government Pleader would submit that on this aspect, there is no instruction from the Department, in all probabilities, notice might have been issued. In any event, if notices have not been issued to other suppliers/employers, then the Department may issue notices to them, so that the matter could be heard by the officer nominated by the commissioner and a comprehensive decision could be arrived at in all the cases of deductor."

8. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent. The petitioner shall appear before the first respondent with all their objections /

submissions within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections / submissions, the first respondent shall consider the matter as directed by this Court in WP. Nos. 22749 to 22754 of 2014. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

mk

To

1. The Joint Commissioner (CT)
Chennai East Division
Chennai-6.

2. M/s.Shandong Tiejun Electric Power Engineering Company Limited
IL&FS, Cuddalore Project Site, Near Koththtai & Ariyagoshti Village,Chidambaram Taluka, Cuddalore,
Tamil Nadu - 608 502.

3. The Commercial Tax Officer
Chidambaram I Assessment Circle.

4. The Assistant Commissioner (CT)
T. Nagar Assessment Circle,
Chennai-600 017.

+1cc to Mr.Mohammed Shaffiq,Advocate sr.23401

+1cc to Special Government Pleader(T),High Court, Madras sr.23108

W.P.No.8365 of 2017

vgII(co)
ss(25/4/2017)