In the High Court of Judicature at Madras

Dated : 04.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.31276 & 31277 of 2017 &
WMP.Nos.34353 & 34354 of 2017

Tvl.Shandong Tiejun Electric
Power Engineering Company
Limited, rep.by its Vice President
Project ...Petitioner

Vs

1.The Commercial Tax Officer,
Chidambaram-1.

2.IL & FS Tamil Nadu Power Company
Ltd., II Floor, KPR Tower, College
Road, Chennai-6. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the first respondent in TIN No.33564442141/2012-13 dated 31.10.2017 and TIN No. 33564442141/2011-12 dated 27.9.2017 and quash the same.

For Petitioner :Mr.Adithya Reddy
For Respondent-1 :Mrs.Narmadha Sampath, SGP

COMMON ORDER

Mrs.Narmadha Sampath, learned Special Government Pleader accepts notice for the first respondent. Heard both. In view of the nature of relief this Court wishes to grant, the writ petitions are taken up for joint disposal without ordering notice to the second respondent.

2. The petitioner has filed these writ petitions challenging the orders of assessment dated 31.10.2017 and 27.9.2017 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 respectively for the years 2012-13 and 2011-12.

3. For the subsequent assessment year namely 2013-14, the first respondent passed a similar order dated 27.9.2017, which was challenged before this Court in W.P.No.28684 of 2017. This

Court, after considering the submissions made on either side, partly allowed the said writ petition only with regard to two issues and remanded the matter to the first respondent for a fresh consideration. With regard to the other issues, it was left open to the petitioner to avail the remedies under the provisions of the Statute.

4. In the instant case, only one issue similar to that of the issue arose for the assessment year 2013-14 arises namely rejection of claim of exemption on payment to sub-contractors. Therefore, this Court is of the view that the present assessment proceedings can be remanded to the first respondent to consider that issue alone, leaving it open to the petitioner to avail the remedies provided under the Statute in so far as the other issues.

5. At this juncture, it would be useful to take note of the reasons assigned by this Court in the earlier dated 10.11.2017 in W.P.No.28684 of 2017, which read as follows :

> "3. Under normal circumstances, this Court would have entertained the request made by the learned Government Advocate. But, on a perusal of the impugned order, it is seen that the Assessing Officer virtually abdicated his statutory powers and acted in a haphazard manner, which has prompted this Court to dispose of this writ petition by passing the following order :
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> 4. The petitioner is a civil works contractor and a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner has been awarded a contract for construction of power plant at Chidambaram. The first respondent issued the notice dated 11.6.2015 pointing out various defects.
>
> 5. This Court proposes to consider only two issues, which have been pointed out in the notice, as, with regard the other issues, the petitioner can very well avail the remedy under the Statute, since it requires adjudication into facts. The issues, which this Court proposes to consider, are as follows :
>
> (i) rejection of claim of exemption on payments to sub-contractors;
>
> (ii) estimated sales turnover on purchase omission.

6. In the notice dated 11.6.2015, the first respondent stated that as per Rule 8 (5)(c) of the Tamil Nadu Value Added Tax Rules 2007, a person, claiming exemption on payment to sub-contractors, has to produce evidence that such amount was accounted for by the sub-contractors and furnished the same in the monthly returns before the respective Assessing Officers. With regard to purchase omission, the first respondent stated that on verification of the monthly returns filed by the petitioner on the the input tax credit claimed with reference to other dealers as per Annexure II (sales made by other dealers), there are several omissions on the purchase effected and proposed to tax the petitioner on those transactions.

7. The petitioner submitted their objections dated 07.8.2015 to the notice dated 11.7.2015. Again, the first respondent sent another notice to the petitioner dated 30.9.2016. Once again, the petitioner sent their reply dated 15.12.2016, which, on a prima facie reading, shows that it is a very detailed objection.

8. With regard to the first issue, namely payment to sub-contractors, the petitioner stated that out of 18 sub-contractors, whose names have been mentioned therein, they enclosed records in respect of 14 sub-contractors, for which, exemption has been claimed under Rule 8(5)(c) of the said Rules. In respect two sub-contractors, namely Tvl.Rukmani Infra Project Private Limited and Tvl.Vishvakarma Engineering, the petitioner stated that they are registered dealers on the file of the first respondent and that their returns may be verified by the first respondent himself. In respect of the remaining two sub-contractors, the petitioner requested time, as details are awaited.

9. Unfortunately, the first respondent did not consider the objections in a proper perspective nor assigned any reasons as to why they are not acceptable. With regard to the first issue, the first respondent stated that in respect of the proposal for rejecting the claim of exemption on payments

to sub-contractors, the dealers are not able to furnish details in complete shape and that the proposal has been properly made. With regard to the second issue, the first respondent merely stated that the reply is not satisfactory.

10. Time and again, this Court is pointing out that an order devoid of reasons is liable to be set aside. In this regard, it will be worthwhile to refer to the decisions of the Hon'ble Supreme Court in the cases of

(i) Siemens Engineering and Manufacturing Co. of India Ltd. Vs. Union of India [reported in AIR 1976 SC 1785];

(ii) Ravi Yashwant Bhoir Vs Collector [reported in 2012 (4) SCC 407]; and

(iii) Orient Paper Mills Limited Vs. Union of India [reported in 1978 (2) ELT J. 345;

and the decision of this Court in the case of Floor Fixers Vs. CTO [W.P.Nos.20364 to 20366 of 2016 dated 02.8.2016].

11. The above referred to decisions, if applied to the case on hand, the only conclusion that can be arrived at is that the impugned assessment order is illegal and liable to be set aside.

12. For all the above reasons, the writ petition is partly allowed, the findings rendered by the Assessing Officer in respect of (i) rejection of claim of exemption on payments to sub-contractors and (ii) estimated sales turnover on purchase omission, are set aside and the matter is remitted back to the first respondent for a fresh consideration. With regard to the other issues, it is open to the petitioner to avail the remedy provided under the provisions of the Statute. The first respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment under those two heads by passing a speaking order on merits and in accordance with law."

6. In the said decision, this Court noted that on the first issue, namely payment to sub-contractors, the petitioner stated that out of 18 sub-contractors, they had enclosed records in respect of 14 sub-contractors, for which, exemption had been claimed under Rule 8(5)(c) of the Tamil Nadu Value Added Tax

Rules, 2007. However, in the instant cases, in respect of the assessment year 2012-13, it appears that there are 11 sub-contractors and that the petitioner had enclosed records in respect of all the 11 sub-contractors while claiming exemption under Rule 8(5)(c) of the said Rules. Further, in respect of the assessment year 2011-12, details from six sub-contractors are awaited.

7. Thus, by following the earlier order dated 10.11.2017, these writ petitions are partly allowed, the finding rendered by the Assessing Officer in respect of rejection of claim of exemption on payment to sub-contractors is set aside and the matters are remitted back to the first respondent for a fresh consideration along with the assessment for the year 2013-14, which has also been remanded. The first respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment under the said head by passing a speaking order on merits and in accordance with law. With regard to other issues, it is open to the petitioner to avail the remedies provided under the Statute and the petitioner is granted 15 days' time to file an appeal before the Appellate Authority namely the Appellate Deputy Commissioner (CT), Cuddalore and if the same is presented, the papers shall not be returned on the ground of limitation. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS
To
1. The Commercial Tax Officer, Chidambaram-1.

2. The Deputy Commissioner (CT), Cuddalore.

3. The Commercial Tax Officer, Cuddalore.

Copy to: The Section Officer,
ER Section/VR Section, High Court, Madras.

+ 1 cc to M/s. Adithya Reddy, Advocate SR.85397
+ 1 cc to Special Government Pleader Sr.85803

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SS(CO)
EU(21/12/2017)