IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.21193 to 21195 of 2017
and W.M.P.Nos.22087 to 22089 of 2017

TJSV Steel Fabrication and Galvanising
(India) Pvt. Ltd.,
Represented by V.G.Suresh, Advisor,
Kondampatti (P.O.), Gudimangalam,
Udumalpet 642 201 ... Petitioner in all W.Ps.

..vs..

The Assistant Commissioner (CT),
Udumalpet North Circle,
Udumalpet ... Respondent in all W.Ps.

Prayer in all W.Ps.:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN Nos.33642482503/2009-10; 33642482503/2010-11, dated 30.06.2017; 33642482503/2011-12 and to quash the same.

For Petitioner in all W.Ps. : Mr. Parthasarathy, for, M/s. N.Inbarajan

For Respondent in all W.Ps. : Mr. K.Venkatesh, Govt.Advocate

C O M M O N O R D E R

Heard Mr.Parthasarathy, learned counsel, for Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Government appearing for the respondent, in all the above writ petitions. With consent of the learned counsel appearing for both sides, the writ petitions themselves are taken up for final disposal, at the admission stage itself.

2. 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, (in short "the Act") is aggrieved by the assessment orders, dated 30.06.2017, for the assessment years 2009-10, 2010-11 and 2011-12.

3. So far as the challenge to the assessment order, for the year 2009-10, is concerned, the same has became final, in the light of the fact that the respondent has issued a fresh revised notice dated 28.07.2017, proposing to re-do the assessment.

3.1. Therefore, the assessment order, dated 30.06.2017, for the assessment year 2009-10 deserves to be set-aside. Accordingly, W.P.No.21193 of 2017 is allowed and the assessment order, dated 30.06.2017, for the year 2009-10, is set-aside, giving liberty to the petitioner to submit their objections to the revised notice, dated 28.07.2017, within fortnight, from the date of receipt of a copy of this order, after which the respondent shall fix the date for personal hearing, examine the records and type of manufacture done by the petitioner, etc., and re-do the assessment in accordance with law.

4. This leaves us with the challenge to the assessment orders for the year 2010-11 and 2011-12.

5. For the assessment order, dated 30.06.2017, for the year 2010-11, the following three issues arises for consideration, namely, (i) short payment of tax treating the galvanizing as Works Contract; (ii) availment of Input Tax Credit on ineligible rules; and (iii) non-payment of TDS, as per Section 13 of the Act, on construction of the building.

6. For assessment order, dated 30.06.2017, for the year 2011-12, the following five issues arises for consideration, namely, (i) short payment of tax, treating the galvanizing as Works Contract; (ii) non-payment of TDS, as per Section 13 of the Act, on the construction of building; (iii) not reporting sale of scraps; (iv) transport charges collected from buyers, as pre-sale expenses; (v) reversal of ITC not made, as required under Section 19(5)(C) of the Act.

7. From the document annexed in the typed set of papers, it is seen that for the assessment years 2010-11 and 2011-12, the petitioner has given an elaborate explanation with regard to the first issue, namely, regarding the galvanizing works done by them, which according to the petitioner, is a job work. The petitioner has discussed about the scope and expression of "works contract" as defined under Section 2 (43) of the Act, referred to certain decisions as to how the transaction has to be taxed under the provisions of the Act in contra-distinction with the computation of the difference in the Central Sales Tax Act, etc.,

8. However, I find that the respondent has in a very sketchy manner dealt with the objections. Probably, if the respondent has fixed a very specific date, heard the petitioner and examined the process of manufacture, the errors, which have occurred for the assessment years 2010-11

and 2011-12 would not have occurred. The respondent would have stated that though opportunity of personal hearing was granted, the petitioner did not avail the same. However, the respondent has failed to take note of the circular issued by the Commissioner in Circular No.7 of 2014, where a direction has been given to the Assessing Officer to fix a particular date for personal hearing. In other words, there cannot be a combined notice for submitting objections as well as personal hearing. This is so, because, if, on objections being filed by the petitioner, if the Assessing Officer is fully convinced with the objections, he may not be required to examine the dealer at all and he may drop the proceedings. However, if there is any clarification to be given, then the Assessing Officer will issue notice directing the dealer to appear before him, on an appointed date and give his explanation.

9. This procedure has not been adopted by the respondent for both these assessment years (2010-11 and 2011-12). On this issue, useful reference can be made to the decision of this Court, in the case of ALBIS Constructions v. The Assistant Commissioner, 2017 (102) VST 131 (Mad.) wherein the Court, after considering Circular No.7 of 2014 set-aside the assessment order and remanded the matter to the Assessing Officer, for passing fresh orders of assessment, after affording an opportunity of personal hearing, by indicating the exact date of such hearing.

10. Thus, for the above reasons, the impugned assessment orders, dated 30.06.2017, for the years 2010-11 and 2011-12 also call for interference and W.P.Nos.21194 and 21195 of 2017 have to be allowed and the orders of assessment have to be set-aside and the matters have to be remanded back to the respondent, for fresh consideration.

11. In the result, W.P.Nos.21194 and 21195 of 2017 are allowed and the orders of assessment, dated 30.06.2017, for the assessment years 2010-11 and 2011-12 are set-aside and the matters are remanded back to the respondent, for fresh consideration. The respondent is directed to fix a specific date for personal hearing and take-up all the matters together, for adjudication of the revised notice(s), dated 28.07.2017 as well as the objections raised by the petitioner for assessment years 2010-11 and 2011-12 and re-do the assessments, for all the three assessment years, in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Assistant Commissioner (CT),
   Udumalpet North Circle, Udumalpet

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.58474
+1cc to the Government Pleader, S.R.No.58943

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GN(04/09/2017)