IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.08.2017

Coram

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

Writ Petition Nos.21377 to 21381 of 2017
and
W.P.M.P.Nos.22340 to 22347 of 2017

Terex India Pvt Ltd.,
Rep. by the Authorised Signatory,
E-18, Phase II,
Expansion II, SIPCOT Industrial Complex,
Hosur - 635 109. ...Petitioner in all WPs.

Vs.

1.The Assistant Commissioner (CT),
Hosur North.

2.Consolidated Construction Consortium Ltd.,
#5, 2nd Link Street, CIT Colony, Mylapore,
Chennai - 600 004.

3.Lloyd Insulations (India) Ltd.,
#5, Haddows Road, 1st Lane, Nungambakkam,
Chennai-600 006.

4.Assistant Commissioner (CT),
Mylapore Assessment Circle, Chennai.

5.Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Chennai. ...Respondents in all WPs.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent in order dated 22.02.2017 in TIN Nos.33193323401/2009-10, 2010-11, 2011-12, 2012-13, 2013-14 respectively in so far as it seeks to demand amounts towards TDS and quash the same.

For Petitioner in all WPs. : Mr.Adithya Reddy

For Respondents in all WPs. : Mr.K.Venkatesh Government Advocate

COMMON ORDER

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents.

2. The petitioner, who is a registered a dealer on the file of the first respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (for short "TNVAT Act") is aggrieved by the orders of assessment passed by the first respondent pertaining to the assessment years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

3.The petitioner has challenged the impugned orders only with regard to the levy of tax on account of tax not being deducted at source. The petitioner's case is that they had engaged the services of respondents 2 and 3 for construction of superstructure in the land owned by the petitioner and the construction was completed during the year 2013. The petitioner, while effecting payment to respondents 2 and 3 did not deduct tax at source, as the respondents 2 and 3, who are leading contractors had informed that they would be paying tax and necessary certificate will be produced by them. Thus, when the deducting assessee himself has agreed to pay the tax to his Assessing Officer, the petitioner, on a bonafide belief and considering the size of the organization did not deduct tax source. However, the petitioner was aware that as per the provisions of TNVAT Act, they are bound to produce a declaration from the Assessing Officer of the respondents 2 and 3 viz., the respondents 4 and 5 herein and place the same for consideration of the first respondent . However, when the petitioner approached the second respondent, the second respondent had issued only a certificate dated 02.09.2016 stating that the taxable turn over has been reported in their monthly returns and taxes thereon has been paid. So far as the third respondent is concerned, they have not given a certificate, but they have stated that the taxable turn over has been reported and the tax has been paid. Faced with this situation, the petitioner, being left with no other option had made such submissions before the first respondent, which was not accepted, resulting in the impugned orders being passed.

4. With regard to the other issues i.e, except the tax deducted at source, the petitioner has filed appeals before the statutory appellate authority. The learned counsel for the petitioner submitted that the petitioner is under great predicament because they would not be in a position to approach the respondents 4 and 5, who are the Assessing Officers of respondent 2 and 3 and they were informed that the Assessing

Officers, viz., respondents 4 and 5 would take considerable time to issue necessary declaration. Therefore, the petitioner has come forward with the request to his Assessing Officer, viz., the first respondent to accept the certificate given by the second respondent and also to cause necessary verification from the respondents 4 and 5 so that the same transaction will not be taxed twice. This Court is aware of the fact that there is no privity between the first respondent and respondents 4 and 5. Therefore, there is no statutory duty on his part to cause such verification. Nevertheless, the first respondent, being the Assessing Officer of the petitioner has to ensure that there is no double taxation. Therefore, in my considered view, slight departure can be made in the instant case, where the first respondent using his official machinery can verify from the respondents 4 and 5 as to whether the taxable turn over pertaining to the subject construction has been reported with the respondents 2 and 3 in their returns and whether taxes have been paid or in the alternative, the first respondent may address the respondents 4 and 5 for issuance of necessary declaration as sought for.

5. Bearing in mind the above observations, the first respondent is directed to consider the petitioner's application dated 25.04.2017 under Section 84 of the TNVAT Act, afford an opportunity of personal hearing and pass a reasoned order on merits and in accordance with law. The petitioner is directed to extend full co-operation to the first respondent for effectively complying with the above directions.

6. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nmm/svki

To

1.The Assistant Commissioner (CT),
Hosur North.

2.Assistant Commissioner (CT),
Mylapore Assessment Circle,
Chennai.

3.Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
Chennai.

+ 1 cc to Mr. Adithiya Reddy, Advocate Sr.57745
+ 1 cc to Special Government Pleader Sr.58145

W.P. Nos.21377 to 21381 of 2017

EU 5.09.17