IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

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

Writ Petition Nos.21878 & 21879 of 2017
and W.M.P.Nos.22907 & 22910 of 2017

S.Sivakumar,
Civil Contractor, ... Petitioner in both W.Ps.

..vs..

The Commercial Tax Officer,
Gudiyatham (East) Circle,
Gudiyatham, Vellore District ... Respondent in both W.Ps.

Prayer:- 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 in his impugned proceedings made in TIN Nos.33634242622/2014-15, dated 15.12.2016 and 33634242622/2015-16, dated 13.01.2017 and quash the same as illegal and contrary to the scheme of the Act.

For Petitioner in both W.Ps. : Mrs.R.Hemalatha
For Respondents in both W.Ps. : Mr.K.Venkatesh, Govt. Advocate

COMMON ORDER

Heard Mrs.R.Hemalatha, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice for the respondent, in both these writ petitions. With consent of the learned counsel appearing for both sides, the writ petitions are taken up for final disposal, at the admission stage itself.

2. The petitioner is aggrieved by the orders of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2014-15 and 2015-16.

3. Two issues were pointed out in the pre-revision notices dated 14.10.2016, namely, there was a discrepancy between the

returns filed by the petitioner and the details in Annexure II filed by the other end dealers. This defect was pointed out based on the information culled out from the Official Website of the Department. The second issue was, with regard to the non-production of the certificates to show that tax has been deducted at source.

4. The petitioner is a Civil Engineering Contractor and has been registered with the Public Works Department and other Governmental Agencies. The petitioner, on receipt of the revised notices, sent their representation, dated 24.10.2016 stating that they require some more time to produce R&T Forms. However, the petitioner did not specifically give any explanation for the alleged discrepancy between Annexure I and Annexure II. After the petitioner obtained the requisite TDS Certificates from the Public Works Department, Gudiyatham Municipality and other Governmental Agencies, the petitioner approached the Assessing Officer, filed Forms R & T and the Assessing Officer accepted those forms and accordingly, issued certificates, dated 31.07.2017, for both the assessment years, from which, it is seen that the total tax due for 2014-15 which was fixed at Rs.72,32,670/- in the assessment order was reduced to Rs.45,35,073/- and for the assessment year 2015-16, the total tax due, as assessed at Rs.71,73,747/- stood reduced to Rs.54,49,353/-.

5. The petitioner's grievance are two folds. Firstly, the Assessing Officer has to pass revised assessment orders, based on the certificates, dated 31.07.2017, failing which the petitioner would not be able to workout their remedy with the appellate authority, if he wishes to prefer appeals, as against the impugned assessment orders. In case, the petitioner has to file appeals, then the appellate authority will insist upon the pre-deposits, as per the tax quantified in the assessment orders and may not reckon the certificates issued by the Assessing Officer, dated 31.07.2017.

6. So far as the mismatch issue is concerned, the learned counsel appearing for the petitioner would submit that it is true that the petitioner did not specifically submit his objections on the said issue, while giving the letters, dated 24.10.2016, as they were only a request for deferring the proceedings and not strictly the objections to the revised notices.

7. I have heard the learned Government Advocate on the above submissions.

8. On facts, it is found that the respondent / Assessing Officer has given due credit to the Forms R & T produced by the petitioner for the relevant assessment years and issued the certificates. In my view, issuance of the certificates alone will not suffice, since the assessment orders have to be consequently revised. Therefore, necessarily, the Assessing Officer has to pass revised assessment orders and in that regard, this Court is inclined to issue appropriate directions, by remanding the matters to the respondent, for passing fresh orders.

9. As the matters are to be remanded to the respondent, this Court is of the view that an opportunity can be granted to the petitioner to raise objections to the "mismatch issue", since their replies, dated 24.10.2016 were strictly, not a replies, but a request for time for production of Forms R & T.

10. In the light of the above, the writ petitions are disposed of, by directing the respondent to revise the assessment orders for the assessment years 2014-15 and 2015-16, based on the certificates, dated 31.07.2017, and while doing so, the respondent shall consider the petitioner's objections with regard to the mismatch issue and in case, details are required by the petitioner, the same shall be furnished by the Assessing Officer to enable the petitioner to effectively submit his objections. The petitioner is directed to give his objections within a period of ten days from the date of receipt of a copy of this order, after which, the respondent shall fix the date for personal hearing, take note of his objections and the decision of this Court in the case of J.K.M. Graphics Solutions Private Limited v. Commercial Tax Officer (2017) 99 VST 343 (Madras) and also the certificates dated 31.07.2017 and pass fresh orders of assessment, in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

srk

To

1. The Commercial Tax Officer,
   Gudiyatham (East) Circle,
   Gudiyatham, Vellore District

+2cc to Mr.R.Hemalatha, Advocate Sr. 59251
+1cc to Special Government Pleader, Sr. 59116

W.P.Nos.21878 & 21879 of 2017
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AR(IV)
VR(05/09/2017)