IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.25937 of 2017
&
W.M.P.No.27498 of 2017

M/s.Sobha Ltd., Formerly Sobha Developers Ltd., Rep. By S.Narayanan, Senior Manager - Finance, Chennai-32. ... Petitioner

Vs

The Assistant Commissioner (CT),
Chengalpattu, Assessment Circle,
16-A, 1st Floor, 1st Main Road,
Anna Nagar, Chengalpattu - 603 001. ... Respondent

PETITION filed under Article 226 of The Constitution of India seeking to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN.33051603474/2012-2013 dated 27.06.2017 and to quash the same.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.Narmadha Sampath,
Special Government Pleader

ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondent. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short the TNVAT Act) on the file of the respondent, has filed this writ petition challenging the assessment order dated 27.06.2017 for the year 2012-13.

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3. The petitioner is engaged in construction of both commercial and residential buildings and stated to be a works contractor. For the assessment year 2012-13, the petitioner executed the constructions for Special Economic Zone (SEZ) Units such as M/s.Infosys Ltd. and M/s.Infosys BPO Ltd. In respect of the works contract turnover, for which, the petitioner was liable to pay tax, the petitioner paid the same. However, in respect of the works contract executed for the SEZ Units, on the strength of the approval given by the Development Commissioner and also the relevant Government Order, the petitioner did not collect tax and therefore, claimed exemption in their monthly return. Apart from that, the petitioner also claimed Input Tax Credit on the strength of the original tax invoices issued by the selling dealers.

4. The assessment for the said year namely 2012-13 was deemed to have been completed in terms of 22(2) of the TNVAT Act. The respondent, subsequently took up verification of the books of accounts and after conducting an enquiry, issued a notice dated 29.04.2015 proposing to levy tax on the sales return turnover for want of records, reversed the Input Tax Credit for want of commodity code, proposed levy higher rate of tax at 14.5% for want of commodity code in the monthly return, levy tax on a portion of the turnover disallowing the exemption claim on the works contract executed for the SEZ developers/units and proposed to levy tax at the rate of 14.5% on the sale of tangible assets. There was also a proposal to levy penalty under Sections 27(3) and 27(4) of the TNVAT Act.

5. The petitioner requested time for filing their objections. However, revised assessment order dated 19.10.2015 was passed confirming the proposal in the notice dated 29.04.2015. The petitioner filed an application dated 19.11.2015 under Section 84 of the TNVAT Act, requesting for rectifying the assessment order dated 19.10.2015. However, such application was rejected by the respondent by order dated 30.11.2015. Therefore, the petitioner challenged the assessment order dated 19.10.2015 in W.P.No. 38510 of 2015 and the said writ petition was allowed and the assessment order dated 19.10.2015 was set aside and the matter was remanded to the respondent to redo the assessment and pass a speaking order, subject to the condition that the petitioner pays a sum of Rs.1,50,00,000/-.

6. The petitioner complied with the said condition and submitted further explanation for the proposals made in the notice dated 29.04.2015. The petitioner's grievance is that without considering the objections and without taking note of the request made by the petitioner to file the records and the other relevant particulars, the respondent rejected the

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objections and documents filed by the petitioner and confirmed the proposal in the notice issued by him. Therefore, the petitioner is once again before this Court challenging the impugned assessment order raising various contentions both factual and legal. The petitioner also contends that the levy of penalty is wholly unjust and to support such a contention, decisions of this Court were relied on.

7. It is relevant to note that while the assessment for the year 2012-13 was pending before the respondent, in respect of the assessments for the years 2013-14 and 2014-15 which were completed by the respondent, the petitioner had preferred appeals before the Appellate Deputy Commissioner (CT), Chennai (South) in A.P.Nos.121 and 122/2016 respectively.

8. The petitioner's case is that they had brought to the notice of the respondent about the pendency of the appeals before the Appellate Authority. Nevertheless, the respondent has proceeded to complete the assessment for the year 2012-13 resulting in the impugned assessment order.

9. After the impugned assessment order had been passed, the Appellate Deputy Commissioner, by orders dated 27.09.2017, partly allowed the petitioner's appeals and partly dismissed the appeals and so far as the issue pertaining to levy of tax of higher rate and denial of exemption claimed on the value of works contracts executed for the SEZ Units located within the State of Tamil Nadu, this Court finds that the Appellate Deputy Commissioner elaborately discussed the issue and set aside the assessment under the said head and remanded the matter back to the Assessing Officer. Similarly, in respect of the other issues as well, the Appellate Authority remanded the matter for fresh disposal giving liberty to the petitioner to file documentary evidence to establish the stand.

10. It is seen that the issues, which have been raised in the present impugned order, are identical to that of the issues, which have been decided by the Appellate Deputy Commissioner while allowing the petitioner's appeals and remanding the matters for fresh consideration. Therefore, I am of the considered view that the assessment for the year 2012-13, which is impugned herein, is also required to be redone in the light of the directions issued by the Appellate Deputy Commissioner for the subsequent years namely 2013-14 and 2014-15, as the issues are identical.

11. Thus, for the above reasons, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration to be decided in terms of the directions of the Appellate Deputy Commissioner

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(CT), Chennai (South) in A.P.Nos.121 and 122/2016 dated 27.09.2017, after giving an opportunity to the petitioner and conducting a personal hearing. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Chengalpattu, Assessment Circle,
16-A, 1st Floor, 1st Main Road,
Anna Nagar, Chengalpattu – 603 001.

+1cc to Mr.P.Raj Kumar, Advocate, S.R.No.74117
+1cc to the Special Government Pleader(T), S.R.No.74274

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&
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CA(09/11/2017)

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