

In the High Court of Judicature at Madras

Dated: 13.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition Nos.38510 of 2015 and 3615 of 2016
and M.P.No.1 of 2015 and WMP No.2983 of 2016

1 Sobha Limited
Formerly Sobha Developers Ltd. Rep. by S.
Narayanan Senior Manager - Finance No.115
Kothari Buildings Nungambakkam High Road
Chennai-34.
..... Petitioner in the above W.Ps.

Vs

1 The Assistant Commissioner
(CT) Chengalpattu Assessment Circle
Chengalpattu - 603001.
2 Commissioner of Commercial
Taxes Chepauk Chennai-05.
3 Government of Tamil Nadu
Rep. by its Secretary Commercial Taxes
Department Fort St.George Chennai-09.
..... Respondents in the above W.P.s

W.P.No.38510 of 2015:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the Order passed by the 1st Respondent in TIN:33051603474/2012-2013 dated 19th October 2015 and quash the same.

W.P.No.3615 of 2016:

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the Impugned Order passed by the 1st respondent in TIN/33051603474/ 2012-2013 dated 30th November 2015 quash the same.

For Petitioner : Mr.Raghavan Ramabadran
For Respondents: Mr.K.Venkatesh, G.A.

C O M M O N O R D E R

1. These are two (2) Writ Petitions, assailing the assessment order dated 09.10.2015 and 30.11.2015, passed in the petition filed by the petitioner, under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act').).

2. W.P.No.38510 of 2015, accordingly, assails the assessment order dated 09.10.2015, while W.P.No.3615 of 2016 lays a challenge to the subsequent order, as noticed above, dated 30.11.2015.

2.1. To be noted, the period in issue pertains to the Assessment Year (A.Y) 2012-13.

3. For the purpose of adjudicating upon the captioned Writ Petitions, the following broad facts are required to be noticed.

3.1. The petitioner claims that between April, 2012 and March, 2013, in the course of its business, it executed the works contract for construction of commercial complexes qua entity, set up in the Special Economic Zone (in short SEZ), in the State of Tamil Nadu.

3.2. It appears that the petitioner, instead of claiming the benefit of zero rating, under Section 18 of the 2006 Act, took the route of claiming exemption qua sales made to developer, and/or, co-developer of SEZ, by relying upon G.O.Ms.No.193 dated 30.12.2006, issued under Tamil Nadu General Sales Tax Act, 1959.

3.3. The petitioner claims that the said Notification will continue to operate under the 2006 Act, by virtue of the provisions of Section 88(3)(i) of the 2006 Act.

3.4. It appears that respondent No.1 has issued a pre-assessment notice dated 29.04.2014 to the petitioner. By virtue of this notice, opportunity was also sought to be given to the petitioner to file objections qua the proposals made therein.

3.5. The petitioner claims that the said notice was never served upon it.

3.6. It may be pertinent to note, at this juncture, that while the respondents referred to the pre-assessment notice dated 29.04.2014 in the common counter affidavit, neither the copy of the said notice nor any proof of the same having been dispatched and served on the petitioner, is appended to the counter affidavit.

4. Be that as it may, respondent No.1 proceed to pass the impugned assessment order dated 19.10.2015.

4.1. Via the said assessment order, respondent No.1 redetermined the taxable turnover and added a sum of Rs.72,62,49,034/- towards it. In arriving at the re-determined taxable turnover, respondent No.1, added back the sums on account of the following:

(i) a sum of Rs.4,53,751/- was added back on account of the

sales return qua which, according to the respondents, relevant documents were not filed.

(ii) Input Tax Credit (ITC) claimed at the rate of 14.5% on a turnover of Rs.6,22,51,713/- was reversed on account of non-declaration of the commodity code.

(iii) Sales made to the extent of Rs.37,47,298/-, on which, rate of tax applied was 5%, was disallowed, as the commodity code was not mentioned, and hence, the said turnover was taxed at a higher rate of 14.5%.

(iv) Exemption claimed by the petitioner with respect to the sales made qua dealer located in SEZ were denied on the ground that they were in the nature of works contract and therefore, were liable to be taxed at the rates specified in the Schedule to the 2006 Act.

(iv)(a) In this connection, it is asserted in the impugned order that the principal of zero rating, as has been reflected in Section 18 of the 2006 Act, was applicable, though, not available to the petitioner, as the Special Commercial Units (i.e., goods in this case), were neither exported nor consumed or, even used in the manufacture of other goods that are exported, as is required under Section 18(2) of the 2006 Act.

(iv)(b) Accordingly, the turnover equivalent to Rs.60,79,74,999/- was assessed to tax at the rate of 14.5% under this head.

(v) Lastly, "tangible assets" of a gross value of Rs.5,78,98,000/- were also brought to tax at the rate of 14.5%, since, relevant details, according to respondent No.1, were not furnished.

5. Accordingly, the petitioner was called upon to pay tax in the sum of Rs.11,84,48,370/-. In addition, penalty in the sum of Rs.1,25,92,815/- has also been imposed on the petitioner.

5.1. The record shows that a notice of final assessment and demand qua the tax imposed was also issued on the very same date, i.e., 19.10.2015.

5.2. Furthermore, the record shows that notice of interest dated 19.10.2015 has also been issued for a sum of Rs.1,25,92,815/-. There is obviously a mistake made in this regard, as no interest has been levied by the impugned assessment order. What has been imposed is, penalty for the equivalent amount.

6. That apart, the petitioner, after the impugned assessment order was passed, filed a petition dated 19.11.2015, under Section 84 of the 2006 Act.

6.1. Broadly, in the said rectification petition, the petitioner took the following stand qua each of the issues:

6.2. As far as ITC disallowance of Rs.59,13,912/- is concerned, the petitioner indicated that other material, in the form of original tax invoices issued by the dealers and ledger extract of the suppliers, were available, to substantiate its

claim, notwithstanding the fact that the commodity code had not been mentioned.

6.3. Similarly, with regard to the sales in the sum of Rs.37,47,298/- being subjected to a higher rate of tax at 14.5%, the details of the sales made with item description along with sample invoices was sought to be submitted.

6.4. As regards sales return of Rs.4,53,741/-, which was subjected to a rate of tax at 14.5%, it was indicated that it was not in the nature of sales return, as erroneously understood, the sale return, in fact, reflected the value of the bill certified by the client for a lesser value. Therefore, it was contended that the said amount should not be subjected to levy of tax at the rate of 14.5%.

6.5. In so far as the tax imposed qua sale of tangible assets was concerned, it was indicated that the assets worth Rs.5,78,98,000/- were disposed of by its registered office in Bangalore (now Bengaluru) and, therefore, the applicable tax had been paid under Karnataka Value Added Tax Act. Necessary material substantiating the said assertion was also sought to be placed before respondent No.1.

6.6. As regards the sale made to SEZ Units/developers was concerned, it was claimed that exemption was sought under G.O.Ms.No.193 dated 30.12.2006. The petitioner attempted to dispel the impression gathered by respondent No.1 that the petitioner was seeking to take benefit under Section 18 of the 2006 Act.

6.7. Lastly, the petitioner claimed TDS amount equivalent to Rs.1,55,61,086/- had not been taken into account.

7. A reading of the order dated 30.11.2015 shows that respondent No.1 has dismissed the petition, filed under Section 84 of the 2006 Act, summarily, on the ground that, there was no error apparent on the face of the record.

7.1. Clearly, according to me, several errors had been adverted to by the petitioner, including the fact that, the Tax Deducted at Source (TDS) had not been accounted for, while arriving at the taxable amount. If, nothing else, this was clearly an error apparent on the face of the record.

7.2. Furthermore, the petitioner claims that, via its monthly returns, for the relevant assessment year, in respect of sale to SEZ Units/developers, no claim had been made under Section 18 of the 2006 Act. If that is so, then, in my view, even, this would be an error apparent on the face of the record.

7.3. In so far as the other issues are concerned, qua which material was sought to be placed on record, respondent No.1, may be, *stricto sensu*, right in holding that these are not instances of errors apparent on the face of the record. However, given the fact that there was an apparent error made with respect to the adjustment of TDS, the impugned order needed to be recalled and, accordingly, an opportunity could have been given to the petitioner to place the relevant material on record qua other

issues as well.

8. Thus, having regard to the aforesaid, I have put to learned counsel for the petitioner, that some amount of tax needs to be deposited.

9. Learned counsel for the petitioner has, therefore, agreed to deposit a sum of Rs.1,50,00,000/- with respondent No.1 to show the bonafides of the petitioner.

10. Mr.Venkatesh says that, if, the sum of Rs.1,50,00,000/- is deposited, then, perhaps, a direction can be issued to respondent No.1 to re-visit the impugned assessment order.

11. Accordingly, having regard to the entirety of the circumstances, as also the willingness of the petitioner in agreeing to deposit a sum of Rs.1,50,00,000/-, the impugned orders are set aside with liberty to respondent No.1 to redo the assessment.

11.1. For this purpose, the authorised representative of the petitioner will appear before respondent No.1 on 13.03.2017 at 11.00 a.m. In case, the said date is not convenient to respondent No.1, he will be free to fix another date, which will be proximate to the date indicated above.

11.2. On the date of hearing fixed, the authorised representative will produce before respondent No.1 all documents, on which the petitioner seeks to place reliance, albeit, in original.

12. Respondent No.1, after hearing the authorised representative of the petitioner, and considering the materials placed on record, will pass a fresh order, which will be a speaking order; a copy of which will be furnished to the petitioner.

12.1. Needless to say that the aforementioned exercise shall be completed at the earliest, though, not later than eight (8) weeks from the date of receipt of a copy of the order.

13. Furthermore, the sum of Rs.1,50,00,000/- shall be deposited by the petitioner with respondent No.1 within a period of two (2) weeks from the date of receipt of a copy of the order.

14. The Writ Petitions are, accordingly, disposed of.

15. Consequently, the connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

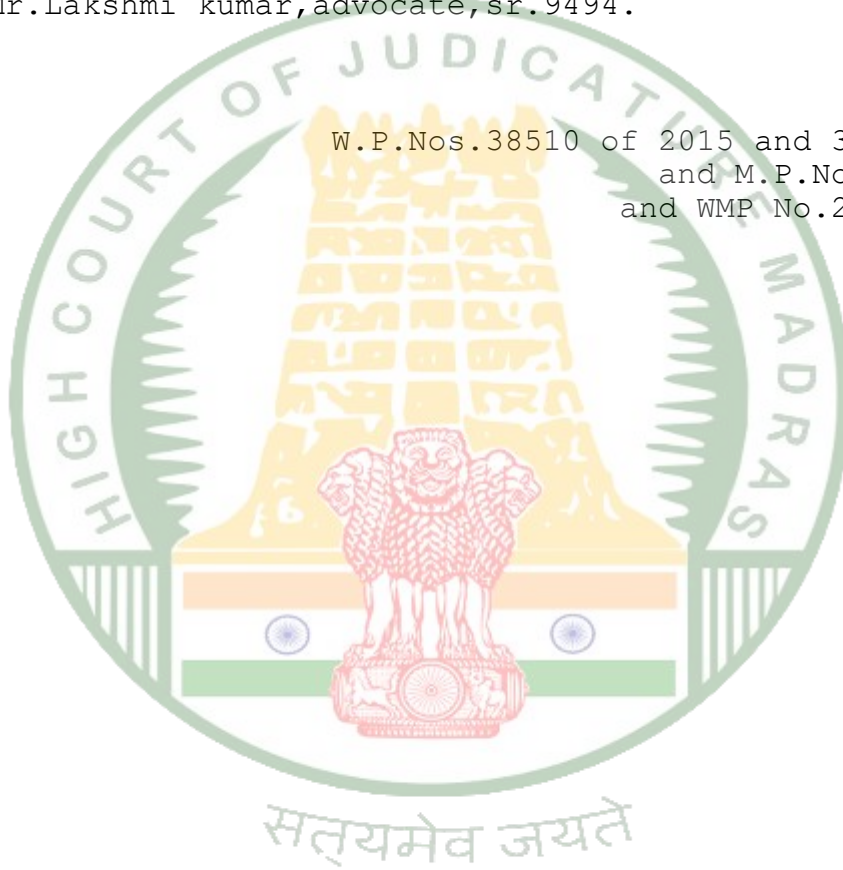
To

- 1 The Assistant Commissioner
(CT) Chengalpattu Assessment Circle
Chengalpattu - 603001.
- 2 Commissioner of Commercial
Taxes Chepauk Chennai-05.
- 3 The Secretary Commercial Taxes
Department, Fort St.George Chennai-09.

+1 cc to Mr.Lakshmi kumar,advocate,sr.9494.

pa(co)
krd 28/2

W.P.Nos.38510 of 2015 and 3615 of 2016
and M.P.No.1 of 2015
and WMP No.2983 of 2016



WEB COPY