BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM:
THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.A.(MD) Nos.743, 744, 745, 746, 747, 748, 749 & 750 of 2017
and
C.M.P.(MD) Nos.5526, 5527, 5528, 5529, 5530, 5531, 5532 & 5533 of 2017
and
W.P.(MD) Nos.9502, 9503, 9504, 9505, 9506, 9507, 9508 & 9509 of 2017
and
W.M.P.(MD) Nos.7249, 7250, 7251, 7252, 7253, 7254, 7255 & 7256 of 2017

M/s.Chella Engineering Works
rep.by its Sole Proprietor
Thiru.M.A.Ganesan
No.1, SIDCO Industrial State
Melavasthachavadi, R.C.College (Post)
Thanjavur ... Appellant/Petitioner/
Petitioner in all cases

-vs-

The Assistant Commissioner (CT), FAC
Thanjavur - II Assessment Circle
Commercial Taxes Buildings, Thanjavur ... Respondent/ Respondent
Respondent in all cases

PRAYER (in W.A.(MD) No.743 of 2017) : Writ Appeal filed under Clause 15 of Letters Patent against the interim order, dated 24.05.2017 in W.M.P.(MD) No.7249 of 2017 in W.P.(MD) No.9502 of 2017, on the file of this Court.

Prayer in WA(MD). 744/ 2017 :

Petition filed under clause 15 of letters against the order passed on 24/05/2017 in WMP(MD) No.7250 of 2017 in WP(MD)No.9503 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 745/ 2017 :

Petition filed under clause 15 of letters against the order passed on 24/05/2017 in WMP(MD) No.7251 of 2017 in WP(MD)No. 9504 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 746/ 2017 :

Petition filed under clause 15 of letters against the order passed passed on 24/05/2017 in WMP(MD) No.7252 of 2017 in WP(MD)No. 9505 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 747/ 2017 :

Petition filed under clause 15 of letters against the order passed passed on 24/05/2017 in WMP(MD) No.7253 of 2017 in WP(MD) No. 9506 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 748/ 2017 :

Petition filed under clause 15 of letters against the order passed passed on 24/05/2017 in WMP(MD) No.7254 of 2017 in WP(MD) No. 9507 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 749/ 2017 :

Petition filed under clause 15 of letters against the order passed passed on 24/05/2017 in WMP(MD) No.7255 of 2017 in WP(MD) No. 9508 of 2017 pending disposal of this Honourable Court.

Prayer in WA(MD). 750/ 2017 :

Petition filed under clause 15 of letters against the order passed passed on 24/05/2017 in WMP(MD) No.7256 of 2017 in WP(MD) No. 9509 of 2017 pending disposal of this Honourable Court.

Prayer in WMP(MD). 7249/ 2017 :

Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari or any other appropriate writ order or direction in the nature of writ calling for the records relating to the penalty portion of the order TIN33123821486/ 2013-14 dated 20.04.2017 passed by the respondent quash the same and pass order on merits and pass such further or other order as this honourable court may deem fit.

Prayer in WMP(MD). 7250/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2014-15 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2014-15 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble.

Prayer in WMP(MD). 7251/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2015-16 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2015-16 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble.

Prayer in WMP(MD). 7252/ 2017 :

Petition filed under Article 226 of the Constitution of India to stay the operation of the penalty portion of the impugned order No. TIN33123821486/2008-09 dated 20.04.2017 passed and also the consequent demand notice served by the respondent in respect of the assessment year 2008-09 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and pass such further orders as this Honble Court deems fit and proper in the facts and circumstances of the case and render justice

Prayer in WMP(MD). 7253/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2009-10 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2009-10 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble court may deem fit.

Prayer in WMP(MD). 7254/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2010-11 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2010-11 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble court may deem fit.

Prayer in WMP(MD). 7255/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2011-12 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2011-12 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble court may deem fit.

Prayer in WMP(MD). 7256/ 2017 :

Petition filed under Article 226 of the Constitution of India to Stay the operation of the penalty portion of the impugned order No.TIN33123821486/2012-13 dated 20.04.2017 passed and also the consequent demand notice served by the Respondent in respect of the assessment year 2012-13 under the Tamil Nadu Value Added Tax Act, 2006, pending disposal of this writ petition and to pass such further orders as this Honble court may deem fit.

Prayer in WP(MD). 9502/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court toissue a writ of Certiorari filed mandamus or any other appropriate writ order or direction in the nature of writ calling for the records relating to the order TIN33123821486/2013-14 dated 20.04.2017 passed by the respondent quash the same and pass order on merits and pass such further or other order as this honourable court court may deem fit.

Prayer in WP(MD). 9503/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari filed mandamus calling for the records relating to the order TIN33123821486/2014-15 dated 20.04.2017 passed by the Respondent quash the same and further direct the respondent to pass fresh order on merits and pass such further or other order as this Honble Court.

Prayer in WP(MD). 9504/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari filed mandamus calling for the records relating to the order TIN33123821486/2015-16 dated 20.04.2017 passed by the Respondent quash the same and further direct the respondent to pass fresh order on merits by considering the advance ruling given by the Advance ruling authority.

Prayer in WP(MD). 9505/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorari, or any other appropriate writ, order or direction in the nature of writ, calling for the records relating to the penalty portion of the order TIN33123821486/2008-09 dated 20.04.2017 passed by the respondent quash the same and pass order on merits and pass such further or other order as this Honble Court

Prayer in WP(MD). 9506/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records relating to the penalty portion of the order TIN33123821486/2009-10 dated 20.04.2017 passed by the Respondent quash the same and pass order on merits and pass such further or other order as this Honble Court may deem fit.

Prayer in WP(MD). 9507/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records relating to the penalty portion of the order TIN33123821486/2010-11 dated 20.04.2017 passed by the Respondent quash the same and pass order on merits and pass such further or other order as this Honble Court may deem fit.

Prayer in WP(MD). 9508/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records relating to the penalty portion of the order TIN33123821486/2011-12 dated 20.04.2017 passed by the Respondent quash the same and pass order on merits and pass such further or other order as this Honble Court may deem fit.

Prayer in WP(MD). 9509/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records relating to the penalty portion of the order TIN33123821486/2012-13 dated 20.04.2017 passed by the Respondent quash the same and pass order on merits and pass such further or other order as this Honble Court may deem fit.

For Appellant : Mr.S.Sivakumar

For Respondent : Mr.R.Karthikeyan
Addl. Govt. Pleader

COMMON JUDGMENT

[Judgment of the Court by T.S.SIVAGNANAM, J.]

Heard Mr.S.Sivakumar, learned counsel appearing for the appellant and Mr.R.Karthikeyan, learned Additional Government Pleader, who accepts notice on behalf of the respondent in all the writ appeals.

2. With the consent of both sides, the writ petitions are also taken up for final disposal along with the writ appeals at the admission stage itself.

3. The appellant is a registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 and filed these appeals as against the interim orders, dated 24.05.2017, granted in W.P.(MD) Nos.9502, 9503, 9504, 9505, 9506, 9507, 9508 & 9509 of 2017, in and by which the Writ Court directed the appellant to deposit 50% of the penalty within a time frame.

4. The writ petitions are broadly classifiable into two categories, namely, those challenging the orders passed by the Assessing Officer for the assessment years 2008-2009 to 2012-2013, wherein the Assessing Officer levied penalty on the appellant. With regard to the other writ petitions for the assessment year 2013-2014 to 2015-2016 are concerned, the challenge is to the assessment orders, wherein the Assessing Officer levied tax and penalty on the appellant.

5. In respect of the impugned orders in the writ petitions, the appellant has got efficacious and effective appeal remedy before the Appellate Authority. However, the learned counsel for the appellant would submit that the condition imposed by the Writ Court while granting stay is an onerous condition.

6. Considering the fact that the challenge is to the penalty for the assessment years 2008-2009 to 2012-2013, we are of the view that the appellant has to prefer appeals before the Appellate Authority as against those assessment orders and during the pendency of the appeals, the penalty shall not be demanded by the Appellate Authority, on the appellant furnishing a personal bond for the full amount and keeping it alive till the disposal of the appeals. The appellant is granted fifteen days time to file such appeals along with the personal bonds.

7. With regard to the assessment orders for the year 2013-2014 to 2015-2016, we find that the issues raised by the appellant are all factual issues to be adjudicated before the Assessing Officer. However, the appellant did not avail the opportunity granted to them by the Assessing Officer. Considering the fact that supplies were effected to a Government of India Company, we are inclined to grant one more opportunity to the appellant subject to certain conditions.

8. Accordingly, the appellant is directed to pay 15% of the tax demanded in respect of the assessment years, namely, 2013-2014 to 2015-2016, within a period of two weeks from the date of receipt of a copy of this Judgment and if the same is paid, the appellant is entitled to treat the assessment orders as show-cause notices, submit their objections within a period of fifteen days thereafter and on receipt of the same, the Assessing Officer shall afford an opportunity of personal hearing to the appellant and redo the same in accordance with law.

9. With the above observations, all the writ appeals as well as the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

The Assistant Commissioner (CT), FAC,
Thanjavur - II Assessment Circle,
Commercial Taxes Buildings, Thanjavur.

+8cc to Mr.S.Sivakumar, Advocate Sr.No.61293 to 61300
+1cc to Spl.Government Pleader Sr.No.61468,61469

KRK

VB/JC/SAR4/14.07.2017/7P/11C

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