IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

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THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.3506 of 2018
and W.M.P.Nos.4281 & 4282 of 2018

M/s.C.P.R. & Co.,
rep by its Managing Partner P.Ravi,
No.6/35, Mariamman Kovil Street,
Periyavanasi - 636 457
Mettur Taluk, Salem District. .. Petitioner

Vs.

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Salem District. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings in TIN No.33183243640/2012-13 dated 20.04.2015 and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.M.Hariharan,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the respondent in its proceedings dated 20.04.2015 and to quash the same.

2.It is the case of the petitioner that they are a Civil Contractor and an assessee on the file of the respondent. The respondent issued a notice on 24.12.2014 stating that the petitioner has been issued with “S” Certificates for the contract works entered and that they had not filed any monthly returns and reported the turnover liable to tax for their turnover was proposed to be estimated and assessed to tax for the year 2012-13. The respondent proposed to adopt Sl.No.6 of the Table to arrive at the labour charges as 30% of the contract amount and balance of 70% as deemed sales value of the TNVAT Act. In view of the same, the respondent has proposed assessment under Section 22(2) of the Act, besides proposed to levy penalty under Section 22(5) of the Act. The respondent has passed the impugned proceedings dated 20.04.2015. According to the petitioner, the impugned proceedings of the respondent is ex-facie illegal as it over looks the Government Order in G.O.No.976.

3.The learned counsel for the petitioner submitted that in similar circumstances, this Court, by order dated 23.01.2018, in W.P.No.1401 of 2018, has passed the following order:

> "...
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> 6.Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 25% of the disputed tax as quantified in the impugned order within three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 25% of the disputed tax quantified in the impugned order within the time stipulated. No costs. Consequently, the connected WMPs are closed."

4.Mr.M.Hariharan, learned Additional Government Pleader (Tax) appearing for the respondent submitted that the order passed in the W.P.No.1401 of 2018 may be followed in this Writ Petition also.

5.Having regard to the submissions made by the learned counsel on either side, following the order passed in the W.P.No.1401 of 2018 dated 23.01.2018, the Writ Petition is disposed of with a direction to the petitioner to pay 25% of the disputed tax as quantified in the impugned order within three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner, if the petitioner fails to comply with the condition of payment of 25% of the disputed tax quantified in the impugned order within the time stipulated. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Salem District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.12047

W.P.No.3506 of 2018 and
W.M.P.Nos.4281 & 4282 of 2018

GMI(CO)
RRK(02/03/2018)