In the High Court of Judicature at Madras

Dated : 13.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.7978 to 7981 of 2018
& WMP.Nos.9937 to 9940 of 2018

M/s.A.P.Constructions India Private Limited, rep.by its Authorized Signatory, Chennai-82. ...Petitioner

Vs

The Commercial Tax Officer, Perambur Assessment Circle, Chennai-99. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records of the respondent respectively in TIN 33251043771/2010-11, TIN 33251043771/ 2011-12, TIN 33251043771/2013-14 and TIN 33251043771/2014-15, all dated 28.12.2017, quash the orders as illegal and direct the respondent to pass fresh orders as per the directions of the Madras High Court respectively in W.P.Nos.6517 to 6520 of 2017 dated 20.3.2017 and also as per the law laid down by Article 366 (29A) (b) of The Constitution of India read with Section 5 of the Tamil Nadu Value Added Tax Act after providing an opportunity of personal hearing to the petitioner before passing final orders in these cases.

For Petitioner : Mr.C.Bakthasiromani
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these writ petitions, the petitioner has challenged the assessment orders for the years 2010-11, 2011-12, 2013-14 and 2014-15.

3. It is the case of the petitioner that the respondent did not consider the voluminous documents submitted by the petitioner and without taking into consideration the legal position in respect of levy of sales tax in working contracts, the respondent passed the impugned orders. The learned counsel for the petitioner submits that earlier, when the petitioner approached this Court by filing W.P.Nos.6517 to 6520 of 2017, this Court allowed those writ petitions by a common order dated 20.3.2017 and directed the respondent to follow the decision of this Court in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343] and also extracted the relevant portion of the order, so that the respondent can complete the assessment. However, without following the directions issued by this Court, the impugned orders have been passed mechanically.

4. On a reading of the impugned orders, this Court finds that largely, the respondent rejected the petitioner's contention on the ground that they have not produced necessary records. The first and foremost exercise that has to be done by the dealer, when there is an allegation of mismatch, is to reconcile the transactions. This reconciliation takes place only if the Authority concerned furnishes relevant particulars. This Court also finds that the respondent furnished relevant particulars, but the petitioner has not filed the reconciliation statement and only produced the records, which are stated to be voluminous.

5. In any event, since the respondent has proposed to tax the petitioner on the ground that two transactions have not been reported in the returns filed by the petitioner, the onus is on the Department to prove that the petitioner has not effected payment of tax or there has been a non disclosure of the turnover. To establish this, the respondent should permit the petitioner to produce the materials in their possession and after the petitioner gives objections, the respondent should consider the objections scrupulously and cannot brush aside the same in a mechanical manner. Since this exercise, as directed by this Court, has not been carried out and the documents filed by the petitioner have not been thoroughly examined, this Court is inclined to remand the matter to the respondent for a fresh consideration.

6. For all the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner and on the date fixed for the personal hearing, the representative of the petitioner shall appear in person before the respondent, produce all the documents including the

reconciliation statements for all the transactions, after which, the respondent shall consider the same and redo the assessments in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

RS

To
The Commercial Tax Officer,
Perambur Assessment Circle, Chennai-99.

+1cc to Mr.C.BAKTHASIROMONI, Advocate, S.R.No. 28314
+1cc to the Government Pleader, S.R.No. 28207

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MG(CO)
TR(09/05/2018)