IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.15490 to 15498 of 2017
& WMP.Nos.16795 to 16803 of 2017

M/s.Chennai RAS Constructions Pvt Ltd.,
Rep.by its Managing Director,
Mr.A.S.George,
No.78, Arcot Road, Kodambakkam,
Chennai-600 024. ... Petitioner in all W.Ps

Vs.

1. The Assistant Commissioner (CT)
MMDA Colony Assessment Circle,
No.10, Greams Road, Chennai-600 006.

2. The Joint Commissioner (CT)
Enforcement -I, (Central),
PAPJM Buildings, Greams Road,
Chennai-600 006.

3. The State of Tamil Nadu,
Rep.by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.
...Respondents in all W.Ps.

COMMON PRAYER :Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in TIN : 33871481579 / 2007 - 08, TIN : 33871481579 / 2008-09, TIN : 33871481579 / 2009 - 10, TIN : 33871481579 / 2010 - 11, TIN : 33871481579 / 2011 - 12, TIN : 33871481579 / 2012 - 13, TIN : 33871481579 / 2013 - 14, TIN : 33871481579 / 2014 - 15, TIN : 33871481579 / 2015 - 16 quash the impugned order dated 22.05.2017 being ultravires of Article 366(29A) read with entry.54/List II/Seventh Schedule of the Constitution of India, 1950 (introduced by way of 46th Amendment to the Constitution of India, 1950) and further direct the 1st and 2nd respondent to follow the mandatory provision envisaged under Section 5 (levy of tax on transfer of goods involved in the execution of works contract) read with rule 8(5)(d) (procedure for assessment) of the Tamil Nadu Value Added Tax Act, 2006 for determining the ''taxable turnover'' involved in the execution of works contract after giving an opportunity of being heard.

For Petitioner in all W.Ps : Mr.V.Sundareswaran
For Respondents in all W.Ps : Ms.G.Dhanamadhri, GA

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing on behalf of the respondents.

2. The petitioner, who is the registered dealer on the file of the respondent under the Provisions of the Tamil Nadu Value Added Tax Act, 2006, is aggrieved by the orders of assessment dated 22.02.2017 for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16. The principle ground on which the impugned orders are challenged is that the Assessing Officer did not even peruse the books of accounts of the petitioner, but merely proceeded based on the Profit and Loss Account, filed before the Income Tax department. It is pointed out that another dealer, who was also registered on the files of the 1st respondent, had approached this Court by filing WP.No.32120 to 32124 of 2015 (M/s.Marutham Developers Vs. The Assistant Commissioner (CT), MMDA Colony Assessment Circle), challenging the assessment orders on the ground that the books of account were not yet verified by the Assessing Officer and the writ petitions were disposed of by order dated 14.12.2015, issuing a specific direction to the Assessing Officer to consider each and every objections after verifying the books of accounts and pass fresh assessment orders. It is submitted that the office of the Assistant Commissioner was then manned by the very same Assessing Officer, who passed the impugned orders and in the case of Marutham Developers, the Assessing Officer on remand verified the books of account and passed fresh assessment order which was in favour of the Assessee.

3. In the instant case, the petitioner have clearly stated that if any further details or data is required, they may be informed to provide and furnish the same. However, the respondents without summoning the books of account, rejected the petitioners claim on the ground that there was no evidence produced and they appeared and stated that there was no evidence. His finding as recorded by the 1st respondent is denied by the Assessing Officer.

4. Be that as it may, the assessment proceedings is an outcome of delay and discussion between the assessee and the

Assessing Officer. This is so because, the Assessing Officer has to correctly assess the tax and collect the same and anything over and above the authorised calculation would be illegal. Therefore, the respondents could have called for the books of accounts and not proceeded merely based on the Income Tax returns filed by the petitioner.

5. Thus for the above reasons, the writ petitions are allowed. The impugned orders are set aside and the same is remanded to the respondents for fresh consideration. The 1st respondent is directed to consider each and every objections given by the petitioner after verifying the books of account and pass fresh Assessment orders for all the years in question on merits and in accordance with law after affording an opportunity of personal hearing to the authorised representative of the petitioner. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
   MMDA Colony Assessment Circle,
   No.10, Greams Road, Chennai-600 006.

2. The Joint Commissioner (CT)
   Enforcement -I, (Central),
   PAPJM Buildings, Greams Road,
   Chennai-600 006.

3. The Secretary,
   Commercial Taxes and Registration Department,
   Fort St.George, Chennai-600 009.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.5346
+1cc to the Government Pleader, S.R.No.6106

W.P.Nos.15490 to 15498 of 2017

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cs/19/02/18