IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.6.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.16008 of 2018 & WMP.No.19037 of 2018

Ambience Constructions & Interiors, rep. by its Proprietor ...Petitioner

Vs

The State Tax Officer, Vadapalani Assessment Circle, No.1, Greams Road, Chennai-6. ...Respondent

Prayer: WRIT PETITION filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings leading to passing of the revised assessment order vide TIN/ 33421466398/2014-15 dated 22.5.2018, quash the same and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan
For Respondent : Mrs.G.Dhana Madhri, GA(Taxes)

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both.

2. The petitioner has filed this writ petition challenging the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2014-15.

3. Earlier, the petitioner approached this Court by filing WP.Nos.6093 and 6987 of 2017 challenging the assessment orders dated 27.9.2016 for the very same year and also for the year 2013-14 on the ground that adequate opportunity was not granted to the petitioner to submit their objections and contest the matter. The said writ petitions were allowed by this Court by a common order dated 27.3.2017, the impugned assessment orders therein were set aside and the matters were remanded to the

respondent for passing fresh orders of assessment after giving an opportunity of personal hearing to the petitioner.

4. Pursuant to that, notices were issued to the petitioner and they also submitted their reply dated 30.12.2017. In the impugned order, the respondent recorded that a discussion was had in person with the petitioner on 06.4.2018.

5. The learned counsel for the petitioner seriously disputes the same by contending that it is only the clerk from the petitioner office, who had gone to the office of the respondent to fix a date for personal hearing and that no hearing took place on 06.4.2018.

6. In my considered view, this is a disputed question of fact, which cannot be adjudicated in a writ petition.

7. Further, the learned counsel for the petitioner points out that the manner, in which, the Assessing Officer has dealt with the joint development agreement is wholly incorrect and the conclusion arrived at with regard to the car parking area is not in consonance with the terms and conditions of the joint development agreement/construction agreement. The learned counsel for the petitioner also submits that an effective opportunity of personal hearing was not granted.

8. In my considered view, all these issues raised by the petitioner are disputed questions of fact. That apart, the matter requires adjudication into facts, which cannot be and should be done in a writ petition, especially when hierarchy of remedies are provided under the said Act. Therefore, the petitioner should invoke the remedies available under the said Act and there is no valid reason for the petitioner to bypass such remedies.

9. Accordingly, the writ petition is dismissed as not maintainable. No costs. Consequently, the connected WMP is also dismissed.

10. If, in the opinion of the petitioner, there is any error in the impugned order, it is always open to the petitioner to approach the Assessing Officer in terms of Section 84 of the said Act and if the Assessing Officer finds that there is any error, then, it is open to the officer to exercise is discretion. The other option available, which is provided under the Statute, is an appeal remedy before the Appellate Deputy Commissioner (CT), Central, Chennai-6. This remedy is an effective remedy, as the Appellate Authority can appreciate and re-appreciate the materials placed on record. Thus, it is open to the petitioner to avail either of the remedies as they may be

advised. In case the petitioner avails the appeal remedy and files an appeal within a period of 15 days from the date of receipt of a copy of this order, the Appellate Authority shall not reject the appeal on the ground of limitation.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1. The State Tax Officer,
Vadapalani Assessment Circle,
No.1, Greams Road, Chennai-6.

2. The Appellate Deputy Commissioner (CT),
Central, Chennnai-6.

+ 1 cc to Mr. S. Sathyanarayanan, Advocate Sr.41616
+ 1 cc to Special Government Pleader Sr.42428

WP.No.16008 of 2018&
WMP.No.19037 of 2018

(CCC)
EU(13/07/2018)