IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P. No.17582 of 2018
and W.M.P.No.20859 of 2018

M/s.Cadagua S.A. Hogenakkal Water
Treatment Project, Rep. by its
Authorised Signatory, Mr.Philip Varghese. .. Petitioner
No.5/964 A.perumal Mistry Street,
Sara Maha Illam, Senthil Nagar,
Dharmapuri 636-705.

-vs-

1.The Assistant Commissioner (CT)
Dharmapuri.

2.The Appellate Deputy Commissioner (CT)
Salem.
(R-2 suo motu impleaded as per order
of Court dt.12.07.2018 made in WP) .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the respondent in TIN.No.33703284757/12-13, quash the impugned proceedings dt.30/05/18 and further direct the respondent to apply the Notification in G.O.Ms.No.77, dated 11.07.2011 under which the petitioner is entitled for the concessional rate of tax at 5% of the turnover relating to the Hogenakkal Water Treatment Projected awarded by TWAD Chennai as directed by the Appellate Deputy Commissioner (CT), Salem in A.P.VAT/106/2015, dt. 03.09.2015.

For Petitioner : Mr.V.Sundareswaran
For Respondent : M/s.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and M/s.G.Dhanamadhri, learned Government Advocate appearing for the respondent. With consent on either side, the writ petition itself is taken up for disposal.

2.In the light of the order this Court proposes to pass, the Appellate Deputy Commissioner (CT), Salem, is suo motu impleaded as second respondent in this writ petition. Registry is directed to effect necessary correction in the cause title.

3.The petitioner has challenged the order of assessment passed by the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the Assessment Year 2012-13. Earlier the petitioner had approached this Court and filed W.P.Nos.26272 and 26273 of 2014 challenging the assessment orders passed by the first respondent dated 23.08.2014, for the Assessment Years 2011-12 and 2012-13 and to direct the first respondent to apply notification in G.O. Ms.No.77, dated 11.07.2011, wherein the petitioner claimed that they are entitled to concessional rate of tax at 5% on the turnover relating to the Hoganekkal Water Treatment Project awarded to them by TWAD Board. The writ petition was allowed by order dated 25.09.2014 and remanded back to the first respondent, who was directed to fix a date for personal hearing and the petitioner was directed to produce necessary documents and the first respondent was directed to pass appropriate orders in accordance with law independent of the inspection report of the Enforcement Wing officials. On such remand, the first respondent confirmed his earlier order and rejected the claim made by the petitioner for levy of concessional rate of tax at 5%. Challenging the said order dated 23.03.2015, the petitioner preferred appeal before the second respondent in A.P. VAT No.106/2015. The Appellate Authority allowed the appeal by order dated 03.09.2015. While doing so, the Appellate Authority made a positive observation that based on the certificate produced by the petitioner, the petitioner would be eligible for concessional levy at 5%, as per the Government Order read with the notification referred to by the petitioner. With this observation, the matter was remanded to the Assessing Officer to verify the original certificate issued by TWAD Board along with related records and vouchers and pass fresh assessment orders. Pursuant to the said direction issued by the Appellate Authority, the petitioner made a representation to the first respondent on 20.10.2015. Nothing happened for nearly two years and only on 18.08.2017 and 13.09.2017, the first respondent issued notices to the petitioner. The petitioner submitted their reply dated 04.04.2018, after which the present impugned order has been passed.

4.I find from the impugned order that the first respondent has not obeyed the direction issued by the Appellate Authority/second respondent in its letter and spirit. There is no finding to the effect as to whether the letter produced by the petitioner from TWAD Board is acceptable or not and all that the first respondent would state that the concessional levy will not be applicable to the writ petitioner. In my view, the exercise that should have been done by the first respondent is to examine the certificate and other related documents and vouchers and then pass a fresh assessment order. This having not been done, this Court is of the considered view that the impugned assessment order is unsustainable.

5.Considering the fact that already the matter was remanded twice to the first respondent, this Court is of the view that no useful purpose would be served in sending back the matter to the first respondent and for the said purpose, the Court has impleaded the second respondent for issuing necessary direction.

6.Accordingly, the writ petition is allowed, the impugned order is set aside and there will be a direction to the second respondent to reopen the appeal in A.P. VAT/106/2015, fix a date for hearing of the petitioner, to verify the original certificate issued by TWAD Board along with related records and vouchers and pass an order on merits and in accordance with law, without remanding the matter to the Assessing Officer. The above direction be complied with by the second respondent within a period of three (3) weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.20859 of 2018 is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sra

To

1.The Assistant Commissioner (CT)
Dharmapuri.

2.The Appellate Deputy Commissioner (CT)
Salem.

+1cc to Mr.V.Sunderswaran, Advocate SR.No.45860
+1cc to Special Government Pleader (Taxes) SR. 46213

W.P.No.17582 of 2018

VSNII(CO)
GN(01/08/2018)