IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30645, 30646, 30648, 30651 & 30654 of 2018
and
WMP.Nos.35734, 35736, 35739, 35744 & 35747 of 2018

M/s.RPN Engineers Chennai Private Ltd.,
Represented by its Managing Director
Mr.P.K.Luqmmanbasha
60, M.Block, 9th Street,
Anna Nagar East, Chennai-102. ..Petitioner (in all WPs)

Vs

1. The Assistant Commissioner (CT)
   Amaindakarai Circle
   F-50, Second Floor,
   First Avenue, Anna Nagar,
   Chennai-112.

2. The Deputy Commissioner (ST)
   Zone V,
   Greams Road, Chennai-6.

3. The Joint Commissioner (ST)
   Chennai (Central) Division
   Greams Road, Chennai-6.

4. The Special Commissioner and
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-5. ..Respondents(in all WPs)

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent herein in his TIN 33321022635/2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 dated 08.10.2018 and to quash the same.

For Petitioner : Mr.R.Kumar
(in all WPs)
For Respondents : Mr.M.Hariharan
Additional Government Pleader
(in all WPs)

C O M M O N O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondents. By consent of the parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. These writ petitions are filed challenging the proceedings dated 08.10.2018 passed in respect of assessment years 2011-2012 to 2015-2016.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

4. The impugned proceedings are nothing but only the revised notices, calling upon the petitioner to file their objections on the proposals made in the said notices. However, the learned counsel for the petitioner contended that the first respondent is not justified in issuing the revised notices, when the refund claim made by the petitioner in respect of TDS already paid by them is still pending, in spite of an order passed by this Court in WP.No.8696 of 2018 dated 19.04.2018. Therefore, he contended that the first respondent without considering the refund claim made by the petitioner, is not entitled to venture into probing the other issues and issue the impugned revised notices. The learned counsel further contended that when a query is raised by the Revenue on 31.07.2018 for furnishing certain particulars for the purpose of considering the refund of TDS and when the petitioner has already filed their reply to the said notices and more particularly, when the Commissioner of Commercial Taxes has also informed the Joint Commissioner, Commercial Taxes, to verify the relevant records and act as per the provisions of law in respect of the refund claim made by the petitioner, the present revised notices cannot be issued. The learned counsel for the petitioner has also sought to rely upon the order passed by this Court in WP.Nos.25295 & 25296 of 2017 dated 21.09.2017.

5. I have given my careful consideration to the submissions made by the learned counsel for the petitioner and I am not convinced to entertain these writ petitions for the following reasons.

6. First of all, it is to be noted that the impugned proceedings are not orders adversely passed against the interest of the petitioner and on the other hand, they are only the notices of proposal. Secondly, it is to be seen that the present impugned notices contain several issues viz., turn over involved in difference of gross profit ratio on deemed sale value arrived, turn over involved in transport charges, difference in labour and sales suppression and the documents not produced. Therefore, it is for the petitioner to give a suitable reply to the above notice of proposal by filing all necessary documents in support of their claim. Without doing so, the petitioner is

not entitled to question the impugned proceedings, admittedly, when the notices of proposal were issued by the competent authority. No doubt, that the petitioner has made a refund claim in respect of TDS already paid by them. It is also true that this Court has already issued a direction to the concerned official to consider the claim of the petitioner and pass orders on such refund claim. At the same time, In my considered view, the pendency of such claim made by the petitioner in respect of TDS paid by them will not prevent the concerned authority to issue the revised notices in respect of the other issues, as stated supra. Therefore, I am of the firm view that the pendency of the refund claim made by the petitioner cannot be a bar for the first respondent to issue the revised notices. Needless to say that the petitioner is entitled to make their objections, including their counter claim made by way of refund claim, while making their reply to the revised notices.

7. The decision relied on by the learned counsel for the petitioner made in WP.Nos.25925 & 25296 of 2017 dated 21.09.2017 is in respect of a case where a direction to the respondents therein was sought for to consider the refund claim of the petitioner therein. In this case also, this Court has already issued a direction to the respondent concerned to consider and pass orders on the refund claim. Whether the petitioner is entitled to any refund or not, is to be considered and decided by the concerned authority, as directed by this Court. Therefore, such direction issued by this Court for considering the refund claim made by the petitioner cannot stand in the way of the first respondent in issuing the revised notices, which admittedly, contain several other issues. Therefore, I find that the present writ petitions are not maintainable against the notices of proposal.

8. Accordingly, all these writ petitions are disposed of, without expressing any view on the merits and contentions raised by both parties, however, by granting liberty to the petitioner to file their reply to the revised notices within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mk

To

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4. The Special Commissioner and
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-5.

+1cc to Mr.R.Kumar, Advocate, S.R.No.79419
+1cc to the Government Pleader, S.R.No.80124

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CS/27/11/2018