BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2018

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.7681 and 7682 of 2018 and
W.M.P.(MD)Nos.7301 and 7302 of 2018

Kalpataru Power Transmission Limited,
(Represented by its General Manager – Taxation, Jayendra Shah),
49 – T, Bawa Building, Second Floor,
North Street, Kailasapuram,
Tirunelveli Junction – 627 001. ... Petitioner in both W.P.s

-Vs-

The Assistant Commissioner (ST),
Tirunelveli Junction Assessment Circle,
Commercial Tax Building,
Reserve Line Road,
Tirunelveli. ... Respondent in both W.P.s

Common Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the Respondent herein in TIN:33305563701/2013-14 and TIN:33305563701/2014-15, dated 01.03.2018, quash the same as illegal and contrary to law, and direct restoration / refund of the sum of Rs.2,88,48,851/- and Rs.1,76,80,144/- is due and acknowledged by proceedings of the respondent dated 20.07.2015 respectively.

For Petitioner : Mr.N.Prasanth for
M/s.Surana & Surana
For Respondent : Mr.J.Padmavathi Devi
Special Government Pleader
(in both W.P.s)

COMMON ORDER

Challenge in the Writ Petitions is to the orders of the respondent in TIN:33305563701/2013-14 and TIN:33305563701/2014-15, dated 01.03.2018. The writ petitioner is the Company involving in execution of Power Transmission Projects. For the assessment years 2013-14 and 2014-15, the excess payment of tax arising out of the excess TDS deducted at source is directed to be refunded, by virtue of order dated 20.07.2015. Since refund was not given, the petitioner approached this Court by way of filing W.P.No.424 and 425 of 2017, wherein, directions were issued for refund. To get over the directions of this Court, the respondent issued a show cause notice dated 28.09.2017. The petitioner filed their objection on

30.12.2017. In view of Section 12-C of the TNGST Act, the respondent has no jurisdiction to issue notice. But, the respondent has passed the impugned order dated 01.03.2018 holding that the order dated 20.07.2015 granting refund is not correct and legal. Aggrieved over the same, the present Writ Petitions have been filed by the writ petitioner.

2. According to the petitioner, a pre-revision notice was issued on 05.12.2017, for not producing Form R and T, as per Rule 9 (a) of the Tamil Nadu Value Added Tax Rules, 2007 [hereinafter referred to as “the Rules”], to Claim TDS payment. But, while deciding the assessment by impugned order, dated 01.03.2018, the authority had included the issue of carrying forward ITC excessively. Since the dealer has carried forward the amount of TDS as ITC in the form of electronic return, the amount cannot be refunded once again. There were no proposals, with regard to carrying forward ITC in excess of eligibility of the petitioner, found in the pre-revision notice. Hence the petitioner had no opportunity to explain the same.

3. Taking a decision on a new proposal, without putting the dealer on notice, amounts to violation of principles of natural justice and therefore, it is contended that the impugned order is liable to be set aside and the matter has to be remanded back for fresh consideration.

4. From the perusal of the materials, it is clear that the impugned order came to be passed without giving opportunity to the petitioner to explain the uncommunicated proposal. The action of the respondent amounts to violation of principles of natural justice. In such circumstances, in the interest of justice, the respondent shall be directed to issue the pre-revision notice afresh incorporating all proposals and call for objections from the assessee. An opportunity of personal hearing shall also be given.

5. In fine, the impugned order passed by the respondent in proceedings TIN:33305563701/2013-14 and TIN:33305563701/2014-15, dated 01.03.2018, are set aside. The respondent is directed to issue a fresh notice. The petitioner is directed to file his objections and produce all the relevant records before the respondent within a period of 15 days from the date of receipt of a copy of this order and the respondent is directed to decide the matter on merits and in accordance with law within a period of one month thereafter.

6. In the result, the Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Tirunelveli Junction Assessment Circle,
Commercial Tax Building,
Reserve Line Road,
Tirunelveli.

+ 2 CC TO M/s.SURANA & SURANA, IN SR No. 62433 & 62434
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 62484

SM
TE/SKN-RSK/SAR-2 : 11/06/2018 : 3P/5C

Common Order made in
W.P.(MD)Nos.7681 & 7682 of 2018
Dated:19.04.2018
(2/2)