IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.3079, 3081, 3083, 3086,
3089, 3092 and 3094 of 2019
and
W.M.P.Nos.3352, 3354, 3355, 3356,
3357, 3359 and 3360 of 2019

East Coast Constructions & Industries Limited
rep.by its General Manager-Finance S Suresh
No.4, MooresRoad, Creams Road,
Chennai 600 006. ...Petitioner in all Writ petitions

Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600031. ...Respondent in all writ petitions

Common Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of revised Assessment orders in TIN No.33870460557/2009-10, TIN No.33870460557/2010-11, TIN No.33870460557/2011-12, TIN No.33870460557/2012-13, TIN No.33870460557/2013-14, TIN No.33870460557/2014-15, TIN No.33870460557/2015-16 dated 26.12.2018 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner in all W.Ps : Ms.Mary Jossy
for Mr.Joseph Prabakar

For Respondent in all W.P.s : Ms.G.Dhanamadhri
Government Advocate

COMMON ORDER

This common order will govern these seven (7) writ petitions. In other words, these common order will dispose of these seven (7) writ petitions.

2. Ms.Mary Jossy, learned counsel representing the counsel on record for the writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone official respondent are before this Court.

3. This Court is informed by learned counsel on both sides that the central theme / core issue in all these 7 writ petitions is the same and only the assessment years are different. Obviously, the numerical values are also different. It is also brought to the notice of this Court that 7 successive assessment years which form subject matter of these 7 writ petitions are '2009-2010 to 2015-2016' (hereinafter 'said AYs' for brevity). It is the case of writ petitioner that writ petitioner executed various work contracts and the writ petitioner's customers made payments for the work done.

4. There is a issue with regard to 'deduction of taxes at source' (hereinafter 'TDS' for brevity) with regard to payment made by the writ petitioner's customers i.e., Contractees. Besides this, there is also one issue pertaining to deemed sale value of goods purchased from other States, which according to the Revenue has not been reported and taxes have not been paid. Considering the, order which this Court now proposes to pass, this Court does not embark upon the exercise of examining these aspects on merits.

5. With the consent of learned counsel on both sides, these writ petitions are taken up, heard out and are being disposed of. To be noted, Revenue has filed a common counter affidavit in all these 7 writ petitions, i.e., counter affidavit dated 01.03.2019 and therefore pleadings are complete.

6. Short point that falls for consideration is personal hearing.

7. There is no disputation that 7 impugned orders in these writ petitions are revised assessment orders that have been made inter alia under Section 27 of the 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32/2006)' [hereinafter referred to as 'TNVAT Act' for brevity]. The 2 issues which constitute the revised assessments have already been alluded to supra and those 2 issues are TDS and purchase of goods from other States, which according to the Revenue, has not been reported and taxes have not been paid.

8. There is no disputation that the Revenue has sent a notice to the writ petitioner and the writ petitioner has also sent objections to the same. The objections have also been considered, which is alluded to in the impugned orders and relevant portion of the impugned order reads as follows:

'To a notice issued to the dealer calling for objections if any to the above proposal, they have vide their letter cited has filed their objection. In their objection they have stated as below.'

9. However with regard to personal hearing, it is the specific and emphatic case of learned counsel for writ petitioner that no personal hearing has been granted, though the writ petitioner asked for the same. In response to the above, learned Revenue counsel adverting to the above said common counter affidavit, more particularly paragraph no.5 of the common counter, submitted that a notice of personal hearing dated 10.06.2016 was issued, the same was served on the writ petitioner on 13.06.2016 asking them to appear for personal hearing. It is also pointed out that this has been acknowledged by the writ petitioner on 22.06.2016 but they failed to utilize the opportunity of personal hearing.

10. Notwithstanding the aforesaid averment in the counter affidavit, learned counsel for petitioner, on instructions submits that the writ petitioner has not received any notice regarding personal hearing. This is a factual dispute. In such a situation, owing to the peculiar facts of this case, attendant circumstances have to be looked into.

11. With regard to the personal hearing aspect of the matter, impugned orders are silent. The impugned orders do not mention that an opportunity of personal hearing was given and the writ petitioner has not availed the same. As the impugned orders are silent on the same, the same cannot be improved by way of counter affidavit. There is no other material before this Court to demonstrate that notice regarding personal hearing has been sent to the writ petitioner and the writ petitioner has not availed the same. More importantly, as rightly pointed out by learned counsel for writ petitioner, even in the counter affidavit and more particularly paragraph no.5 which has been extracted and reproduced supra, there is no mention about the date, time and venue on which the personal hearing was fixed. It merely refers to a service of communication sent to the writ petitioner (receipt of which in any event is disputed by the writ petitioner). This takes us to the need for personal hearing aspect of the matter.

12. There is no disputation before this Court that the relevant circular that is now operating in this regard, i.e.,Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Principal Secretary / Commissioner of Commercial Taxes.

13. Most relevant portion of the said Circular is Paragraph No.3 (a) (iii) which reads as follows:

3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioners / Deputy Commissioners should verify at random the assessment orders passed by the Assessing officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.

(a) Passing of Orders: Fifteen days time-limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:

(iii). As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

14. In the light of the undisputed position that there is a Circular, regarding personal hearing which says in a recommendatory tone that personal hearing shall invariably be afforded to dealers irrespective of whether they are opt for the same or not as respondent in its discretion has considered it necessary to give personal hearing (obviously owing to facts of this case) to the writ petitioner, it is a fit case to remit the matter.

15. In the light of the narrative supra, the following order is passed:

(A). The 7 impugned orders, being orders dated 26.12.2018 bearing reference nos. TIN No.33870460557/2009-10, TIN No.33870460557/2010-11, TIN No.33870460557/2011-12, TIN No.33870460557/2012-13, TIN No.33870460557/2013-14, TIN No.33870460557/2014-15, TIN No.33870460557/2015-16 are set aside, solely on the ground that personal hearing not been granted. In other words these impugned orders are not set aside on merits. This Court does not express any opinion or view on the merits of the matter.

(B) With the consent of learned counsel on both sides, personal hearing is now fixed on 16.07.2019 (tuesday) at 12.00 noon. The venue shall be the office of the sole respondent.

(C) The writ petitioner, on instructions, undertakes to avail the personal hearing on the aforesaid date, time and venue and reiterate the objections already sent without expanding the scope of the matter any further. At best, the writ petitioner can file documents to support the objections already sent. Therefore, the scope of the personal hearing and the 4 corners within which the personal hearing shall perambulate has also been set out here. If the writ petitioner does not avail the opportunity of personal hearing on the aforesaid date, time and venue, impugned orders shall stand revived. If the writ petitioner avails the same, the respondent shall embark upon the exercise of redoing the assessment based on the objections already filed and pass revised assessment orders afresh as expeditiously as possible and in any event, within 12 weeks from the date of personal hearing i.e., on or before 08.10.2019.

(D) The revised assessment order passed afresh in the aforesaid manner shall be communicated to the writ petitioner within 7 working days under due acknowledgment in accordance with the rules under the TNVAT Act.

16. Accordingly, all these 7 writ petitions are disposed of with the above directions. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai 600031.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.53312
+1cc to the Special Government Pleader, S.R.No.52996

W.P.Nos.3079, 3081, 3083, 3086,
3089, 3092 and 3094 of 2019. etc.,

VGII(CO)
CS/07/08/2019