IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.6335 to 6337 of 2012
and
M.P.Nos.1, 1 and 1 of 2012

Chettinad Structural & Engineering Ltd.
Represented by its Director,
S.P.Palaniappan,
Rani Seethai Hall Building, 6th Floor,
603, Anna Salai,
Chennai-600 006. ... Petitioner in all the WPs

Vs.

The Commercial Tax Officer,
Nungambakkam Assessment Circle,
Chennai-600 031. ... Respondent in all the WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the Respondent herein in his TIN No.33180461082/2006-07, TIN No.33180461082/2007-08 and TIN No.33180461082/2008-09 respectively dated 31.1.2012 and to quash the same and direct the respondent herein to re do the assessment after providing a personal hearing and pass orders in accordance with law in accordance with the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.M.Hariharan
(in WP.6335 to 6337/2012)
Government Advocate

COMMON ORDER

The petitioner challenges orders of assessment dated 31.01.2012 for the periods 2006-2007, 2007-2008 and 2008-2009, passed in terms of the provisions of the Tamil Value Added Tax Act, 2006.

2. Though various grounds have been raised challenging the additions and modifications effected to the turnover, the

primary ground agitated before me is the violation of principles of natural justice in so far as the officer has not taken into consideration materials placed before the Commercial Taxes Department, both at the time of visit of the officials of the Enforcement Department or at the time of assessment.

3. The petitioner has filed its objections dated 24.12.2009 to a notice dated 29.11.2009 from the Commercial Tax Department along with Annexures in support of its contentions. Subsequent objections dated 17.05.2010 and 23.01.2012 also been filed.

4.Admittedly the petitioner has not attended the personal hearing afforded on 30.01.2012. The impugned order has been passed very next day i.e. 31.01.2012. A perusal of the same reveals that the officer has not taken into account all submissions and evidences available on record. For instance, one of the transactions in issue relates to a transaction executed in Andhra Pradesh in the Kakinada Port. The argument of the petitioner was to the effect that the transaction concerning the Kakinada Port was one of the job work, the work order and copies of invoices having been placed on record. It has been specifically pointed out by the petitioner that the contract was executed in Andhra Pradesh and there was no transfer of property involved in the execution of the works contracts. The impugned order of assessment merely proceeds on the basis that no separate invoices have been produced for supply and labour, in the absence of which the entire value is liable to brought to be brought to tax as turnover from the sale of fabricated items at the rate of 4%. The finding that no documents have been filed and no explanation offered in regard to the taxability of the transaction, prima facie, conflicts with the sample materials placed on record.

5. I am thus of the view that the assessment should be set aside, putting the petitioner to terms, and a direction issued to the assessing authority to re-do the assessment de novo, also taking into account the materials already available on record. The impugned order of assessment dated 31.01.2012 is thus set aside, upon condition that 25% of the disputed tax demand be paid prior to the date of hearing fixed in paragraph 6 below.

6. The petitioner shall appear before the assessing officer on 04.10.2019 at 10.30 a.m and no further notice need be issued in this regard, along with proof of remittance of 25% of the tax demand as directed above. After hearing the petitioner and considering all submissions made as well as evidences filed and available on records, the officer shall pass an order of assessment within four weeks from date of conclusion of personal hearing.

7.These writ petitions are disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Commercial Tax Officer,
Nungambakkam Assessment Circle,
Chennai-600 031.

Copy to:-
2. The Assessing Officer,
Numbambakkam Assessment Circle,
Chennai - 600 031.

+1cc to Mr.N.Inbarajan, Advocate, SR.No.81648
+1cc to the Spl. Govt.Pleader,(Taxes) Vide Sr.No.82019

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Kak(03.10.2019)