IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.34650 of 2019
and WMP.No.35401 of 2019

M/s.PRV Constructions (P) Ltd.,
represented by its General Manager,
6/73, North Silver Street,
St. Thomas Mount,
Chennai - 600 016. .. Petitioner

Vs.

The State Tax Officer,
Alwarpet Assessment Circle,
Mylapore Taluk Office Building,
1 Floor, 46, Greenways Road,
Chennai - 600 028. .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to accept the methodology of payment of taxes on deemed sale value under Sec.5 of the TNVAT Act based on the directions of the VAT Audit Officers at the time of inspection on 17.07.2009 and accordingly complete the assessments for TNVAT 2009-10 to 2012-13.

For Petitioner : Mr.RL.Ramani,
Senior Counsel
for Mr.B.Raveendran

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

The petitioner seeks a mandamus directing the respondent to accept the methodology of payment of taxes on deemed sale value under Section 5 of Tamil Nadu Value Added Tax Act, 2006, ('Act') and complete the assessments in terms of the provisions of Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2009-2010 to 2012-2013 accordingly. The argument advanced on behalf of the petitioner is that the method of accounting decided upon and fixed on the direction of the Tax Audit Officers at the time of inspection on 17.07.2009 is being followed consistently by it till date. The statement recorded on 17.07.2009 reads thus:

> 'Further you have informed that the payment of VAT as per Section 3 (2) is not applicable to us as we are dealers in works contractor. So you have advised us to pay the VAT as per Section 5 of the TNVAT Act 2006. We admitted the above points and accepted to pay the VAT against Deemed sale value by adding of G.P on the purchase value.
>
> State Recorded by me   Read by me and accepted as correct
> ASSISTANT COMMERCIAL TAX OFFICER
> Group II, Enforcement (East) for PRV CONSTRUCTIONS PVT. LTD.
> Room No.29, 1 Floor, Greams Road,
> Chennai - 600 006.
>
> N.SUBRAMANIAN'

2.The petitioner is on the second round of litigation. Earlier orders of assessment had been passed for the very same years as before me in W.P.Nos.19014 to 19017 of 2015. A learned single Judge of this Court, by order dated 30.06.2016 directed that, upon condition that the petitioner remit 15% of the disputed taxes, the impugned orders of assessment should be taken to be show cause notices to which the petitioner would submit objections. The relevant portions of the aforesaid order are extracted below:

> '4.The petitioner along with their reply to the show cause notice have appended these statements, which were recorded by the Enforcement Wing and requested the respondent to sort out the matter at the earliest. However, the respondent while completing the assessment did not mention anything about the statements and as to whether the plea raised by the petitioner was a bona fide plea. It is submitted by the learned counsel for the petitioner that on and after 01.04.2013 they have discontinued the said patta of filing the returns and reverted back to the old method. So only for the period from 2009-2013, this issue has arisen.
>
> 5.The learned counsel for the petitioner submits that one more opportunity may be granted to the petitioner to place these materials and the respondents may be directed to consider the effect of those materials. However, to be entitled to one more opportunity to place all the materials before the respondents, this Court is of the view that the petitioner should be directed to pay a portion of the tax liability as demanded.

6.In the light of the above, these Writ Petitions are disposed of by directing the petitioner to pay 15% of the disputed tax within a period of six weeks from the date of receipt of a copy of this order and if such payment is effected by the petitioner within the time limit, then the petitioner would be entitled to treat the impugned proceedings as show cause notices and submit their objections to the same and the respondents are directed to afford an opportunity of personal hearing and conclude the proceedings in accordance with law. However, if the petitioner does not comply with the condition imposed by this Court, the benefit of this order will not enure to the petitioner and it is open to the respondent to proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.'

3.Pursuant thereto, there has been exchange of notices and written submissions before the officer and a final notice dated 25.11.2019 issued by the officer, calling upon the petitioner to appear with objections and documentary evidences and also avail an opportunity of personal hearing.

4.According to the assessee, the method of accounting followed consistently by it from 17.07.2009, was in consonance with the opinion and direction of the officials of the Department, and this has been accepted by the petitioner. There is thus no justification for any deviation from the same.

5.The learned single Judge in the order extracted above, has, in my considered view, directed an assessment to be completed, de novo, including specifically the issue of whether the plea raised by the petitioner in regard to method of accounting is bonafide or otherwise. Thus, there is some merit in the argument that the issue as to whether the method of accounting followed was bonafide or otherwise, should be considered specifically as a preliminary issue particularly, in the light of statement dated 17.07.2009.

6.Thus, the impugned orders are set aside and these writ petitions disposed, directing the petitioner to appear before the Assessing Authority on Friday the 20th December, 2019 at 10.30 a.m. without expecting any further notice in that regard. The petitioner shall be heard on all issues arising from the assessment including specifically the question of whether the method of accounting canvassed by it is bonafide or otherwise. The order of assessment passed shall specifically refer to and deal with this issue as well and such order shall be passed within a period of six(6) weeks from date of conclusion of personal hearing. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

vs

To

The State Tax Officer,
Alwarpet Assessment Circle,
Mylapore Taluk Office Building,
1 Floor, 46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.B.Raveendran, Advocate, SR.No.103970.
+1cc to Government Pleader, SR.No.104980.

W.P.No.34650 of 2019
and WMP.No.35401 of 2019

VD(CO)
CSR:21/01/2020