BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.20027, 20032, 20036 and 11053 of 2019

and

W.M.P.(MD).Nos.16548, 16550, 16553 and 8415 of 2019

Madhucon Projects Limited,
rep. by GVLN Sastry, Manager (F&A)
KM 216, NH 45, Madurai Tuticorin Road,
Senthilkkari, Ettayapuram,
Tuticorin. ... Petitioner in all W.Ps

vs.

State Tax Officer,
Ettayapuram,
Tuticorin District,
PIN 628 902. ... Respondent in all W.Ps

PRAYER in WP.(MD).No.20027/2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to Assessment Order CST Asst.No.764868/2015-16 dated 22.07.2019, passed by the respondent, quash the same as arbitrary and illegal.

PRAYER in WP.(MD).No.20032/2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to Assessment Order CST Asst.No.764868/2014-15 dated 22.07.2019, passed by the respondent, quash the same as arbitrary and illegal.

PRAYER in WP.(MD).No.20036/2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to Assessment Order CST Asst.No.764868/2013-14 dated 22.07.2019, passed by the respondent, quash the same as arbitrary and illegal.

PRAYER in WP.(MD).No.11053/2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to Assessment Order CST Asst.No.764868/2012-13 dated 28.12.2018, passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mrs.J.Padmavathy Devi
Special Govt. Pleader
(In all W.Ps)

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 22.07.2019 and 28.12.2018, passed by the respondent and to quash the same.

2.The writ petitioner is an EPC contractor engaged in the business of Construction of various Infrastructure projects all over India. He undertakes construction of roads in the State of Tamil Nadu for National Highways Authority of India and he obtained registration under the TNVAT Act, 2006. On 22.06.2016 and 23.06.2016, the officials of the Enforcement Wing of the respondent department conducted a surprise inspection in the petitioner's business premises and called for certain details for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16. Thereafter, the petitioner was issued with notices by the respondent stating that the petitioner has not declared the monthly returns for transfer of ownership of the goods and failed to furnish Form F and therefore, it was held that the petitioner is liable to pay tax for a turn over of Rs.10,00,000/-. The assessment order came to be passed on 24.04.2018, demanding a sum of Rs.1,45,000/- towards tax and further a sum of Rs.2,17,500/- towards penalty. Since the opportunity of personal hearing was not afforded, the petitioner approached this Court vide W.P.(MD).No.12493 to 12497/2018. This Court by its order dated 12.06.2018 quashed the assessment orders and remanded the matter back to the Assessing Authority with a direction to furnish the details, which were relied on by them in issuing the proposals through pre-assessment notices, call for objections and thereafter, afford an opportunity of personal hearing to the petitioner.

3.Perusal of the records show that notice was sent by the Assessing Authority on 20.02.2019 and the said notice specified the date of personal hearing as 24.06.2019 at 3.30 pm. Whereas, the said notice was received by the petitioner's office only on 24.06.2019 at 4.30 p.m i.e after the time fixed for personal hearing is over. Therefore, the petitioner has addressed a letter to the respondent on 25.06.2019 stating that he had received the notice for personal hearing only at 4.30 p.m on the same day and also made a request for postponement of personal hearing and inform the same to the petitioner. However, in spite of receiving the communication from the petitioner, the Assessing Authority proceeded to pass orders on 22.07.2019.

4.Reading of the impugned order goes to show that as directed by the High Court, a notice dated 14.06.2019 was given fixing the date for personal hearing on 24.06.2019. However, the petitioner has failed to appear in person and did not produce any details/records in support of his claim. Since the dealer has not followed the procedures, provided under Section 51 of the TNVAT Act, 2006, previous assessment order was confirmed, holding that the total and taxable turn over as direct interstate sales are liable to be taxed at 14.5%. The reasons adduced for confirming this order is that the materials sent to their branches/worksites in other States involves transfer of goods and they should be declared in the monthly returns under CST Act, 1956 and that Form F should have been furnished as stipulated under the CST Act, 1957. For all these reasons, the demand made on the earlier instances was reaffirmed.

5.The respondent filed a counter affidavit setting out all the above factual details and justified the impugned orders passed by the respondent. Therefore, the same reasons stated in the impugned orders has been reiterated by the learned Special Government Pleader.

6.Even though it is stated that an opportunity of personal hearing was not availed by the petitioner, there is no averment as to the letter written by the petitioner on 25.06.2019 and that the delivery of the personal hearing notice, after the time fixed for the same. At the out set, this Court is of the view that the respondents have not complied with the principles of natural justice, as directed by this Court in its earlier order, dated 12.06.2018. On this ground alone, the impugned orders are liable to be set aside.

7.In the instant case, tax is levied for transfer of equipments and machineries from one site to other site between States. When the requirement of the machinery is accomplished at one site in execution of the project, naturally, it will be taken to the other site, where it is required. Be it within the State or outside the State, it is transfer of machineries and it does not involve transfer of property from one person to other. It does not attract the element of sale and purchase. In that view of the matter, it does not attract levy of tax. The learned counsel for the petitioner draw the attention of this Court to a judgment rendered by this Court in **Simplex Infrastructure Limited Vs. The Assistant Commissioner (CT), Egmore-II Assessment Circle, Chennai,** reported in ***2019-VIL-494-MAD***, wherein, this Court has held as follows:

> "A declaration in Form F is required to establish stock transfer of goods under the CST Act. However, the production of an F form is not mandatory to establish the petitioners' case. We are concerned with a State tax assessment where other materials are available to assist the officer in arriving at a proper conclusion regarding the true purpose and purport of movement of goods. Thus, while a Form F would, had the same been filed in the CST assessment, support the petitioner's stand, the absence of such Form cannot be fatal to the petitioner's case if the petitioner is in a position to establish its case

otherwise on the basis of other evidences. The certificate of the Chartered Accountant has been rejected though unsupported no reasons have been attributed for such rejection.”

8.Even in the present case, it is a clear case that the petitioner is a Contractor involved in Infrastructure construction. In the present case, he has been carrying out construction of roads for the National Highways Authority of India. Perusal of the impugned orders show that the person who transferred the goods and the consignee are one and the same. In that event, transfer of equipments and machinery will not amount to transfer of property and the process of sale or resale is not attracted in this transaction. As held by the learned Judge in the above mentioned case, it does not attract any case even under CST Act and filing of Form F is not mandatory in this case. In view of the same, I am inclined to set aside the impugned assessment orders passed by the respondent. Accordingly, they are set aside.

9.Accordingly, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (crl side)

// True Copy //

Sub Assistant Registrar(CS)

vs

To

The State Tax Officer,
Ettayapuram,
Tuticorin District,
PIN 628 902.

+4CC to Mr.JOSEPH PRABAKAR, Advocate(SR-91951[F] dated 15/10/2019)

+1 CC to SPL GP (SR-92116[F] dated 16/10/2019)

W.P.(MD) No.20027, 20032, 20036 and 11053 of 2019
15.10.2019

VB(06.11.2019) 4P 7C