IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.16724 to 16727 of 2015
and
M.P.Nos.1 to 1 and 2 to 2 of 2015

M/s.Jyothi Structures Limited
Rep. by its General Manager, Accounts
& Taxation - Hemant Pandit
Myvadi Village
Madathukulam Taluk
Udumalpet ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT) (FAC)
Udumalpet (North)
Udumalpet ... Respondent in all W.Ps.

Common Prayer: Petitions filed under Article 226 of The Constitution of India to issue a writ of Certiorari praying to call for the records on the file of the Respondent in its impugned proceedings made in TIN:33872482134/2006-07, TIN:33872482134/2007-08, TIN:33872482134/2008-09 & TIN:33872482134/2009-10 dated 05.05.2015 respectively and quash the same.

For Petitioner : Mr.R.Hemalatha
For Respondents : Mr.A.N.R.Prathap
Government Advocate (Taxes)

COMMON ORDER

Challenging the notices dated 05.05.2015 issued by the respondent with respect to the assessment years 2006-07, 2007-08, 2008-09 and 2009-10, the petitioner has filed these writ petitions.

2.According to the petitioner, they are the manufacturer of transmission line towers, microwave towers, wind mill towers and substation towers and are having units at Nasik and Raipur. They are also undertaking Rural Electrification Projects throughout the country. In respect of the assessment years in question, they duly filed their returns. After scrutiny of the same and based on the inspection conducted by the Enforcement Wing Officials in the business premises of the petitioner, the respondent issued notices dated 05.05.2015 stating that the contracts with TNEB/PGCIL are not contracts of sale, but are the works contract, for which the value of the materials involved by way of sale, omitted to be included in the works contract and hence, the petitioner is liable to pay tax under Section 5 of TNVAT Act; it is also not an inter-State works contract as the materials are not directly coming to the work spot as the domain of M/s.Jothi Structures, Mumbai, before incorporation; there is no such specification in the work order to be treated as inter-State works contract to claim exemption under Rule 8(5)(a) of TNVAT Rules; there is a difference in TDS deduction for the payment made to the Sub-contractors; interest due for delayed deposit of WCT (TDS); Freight charges were omitted to be included; and lesser GP was adopted for arriving at deemed sale value and hence, it was proposed to revise the assessments under Section 27(1)(a) of the Act and levy penalty. Feeling aggrieved over the same, the petitioner has preferred the present writ petitions for the aforesaid relief.

3.Upon notice, the respondent filed a common counter affidavit justifying the notices impugned herein.

4.Heard both sides and perused the materials placed before this Court.

5.The challenge made in these writ petitions is to the notices issued by the respondent for the assessment years 2006-07, 2007-08, 2008-09 and 2009-10, by which, the petitioner was called upon to file objections, if any, with respect to the revision of assessments. The petitioner, without filing the necessary objections, has straight away approached this Court with the present writ petitions, raising a specific ground that the impugned notices are barred by limitation. As such, this Court deems it appropriate to direct the petitioner to put forth the said ground along with all other grounds available to them by way of objections to the respondent, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall consider the same and pass appropriate orders, meeting out all the grounds raised by the petitioner, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, within a period of six weeks thereafter.

6.All these writ petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT) (FAC)
Udumalpet (North)
Udumalpet

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.22342
+1cc to the Special Government Pleader, S.R.No.22815

W.P.Nos.16724 to 16727 of 2015

SSV(CO)
KKV/13/07/2020