IN THE HIGH COURT OF JUDICATURE OF MADRAS

Dated : 13.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.15275 of 2016, 36269 to 36271 of 2015
and
W.M.P.Nos.13322 to 13324 of 2016
& M.P.Nos.1, 1 & 1 & 2, 2 & 2 of 2015

M/s.Era Infra Engineering Ltd.,
previously known as ERA Construction Ltd.,
rep. by its Authorised Signatory Mr.Vinod Bhatia,
No.161, Thanthai Periyar Nagar,
Gandhi Nagar, Vadakuthu Post,
Panruti Taluk, Cuddalore-607 303. ...Petitioner in all W.Ps

Vs.

1. The Commercial Tax Officer,
Panruti (Rural),
Panruti-607 106. ... 1st Respondent in all W.Ps

2. The General Manager,
NTPC Limited, NTC Bhawan,
Scope Complex, Institutional Area,
Lodhi Road, New Delhi-110 003.
... 2nd Respondent in W.P.No.15275/2016

PRAYER in W.P.No.15725 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33264500797/2013-14 dated 29.01.2016 and consequential garnishee proceedings in Rc.No.A3/37/2015 dated 31.03.2016 and to quash the same.

PRAYER in W.P.Nos.36269 to 36271 of 2015: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33264500797/2010-11, 2011-12 & 2012-13 dated 03.09.2015 respectively.

For Petitioner : Mr.V.Sundareswaran
For Respondent-1: Ms.R.Dhanamadri, GA
For Respondent-2: M/s.King & Patridge

COMMON ORDER

With the consent of both the parties, the Writ Petitions have been taken up today and heard through video conferencing.

2. The petitioner herein had declared his sales for the Assessment Years 2010-11, 2011-12, 2012-13 & 2013-14 in the monthly returns filed under Section 21 of the Tamil Nadu Value Added Tax Act (hereinafter referred to as the 'TNVAT Act'). When the respondent was of the view that the returns were incomplete and incorrect and without proof of payment of tax, the petitioner was assessed to tax to the Best of Judgment under Section 22(4) of the Act, apart from levy of penalty, for wrong claim of ITC and reversal of ITC, which order of reversal of the ITC together with penalty is put under challenge in all these Writ Petitions.

3. Though several grounds have been raised by the petitioner challenging the impugned orders, the learned counsel for the petitioner submitted that no opportunity was extended to them prior to passing of the impugned orders of reversal of ITC and therefore sought for interference, in order to afford them an opportunity to put forth their objections.

4. The learned Government Advocate, on the other hand submitted that, the assessment order was passed only after issuance of pre assessment notice to the petitioner through an E-mail, which the petitioner had not availed of and therefore, there was no infirmity in the impugned orders.

5. Rule 19(1) of the TNVAT Rules enables the department to serve a notice of proposal through Electronic Media and when the respondents claimed that they have already sent a pre-assessment notice through Email, it cannot be said that an opportunity to the assessee was not extended. However, the learned counsel for the petitioner would submit that he has no instructions with regard to such E-mail having been sent and in any case, he would make an earnest plea to extend them another opportunity to put forth their objections since they have valid grounds to defend the proceedings initiated by the respondents.

6. Among other grounds raised, the petitioner had touched upon the merits and had questioned the proceedings of the respondents. On a perusal of the grounds, this Court is of the view that the petitioner could be given an opportunity to put forth his objections before the authorities. This Court, does not intend to go into the merits since it is for the concerned authority to consider the same, based on the evidences available before them. Likewise, this Court also intends to take a lenient view on the plea made by the petitioner with regard to affording one more opportunity to raise their objections and therefore, no views are expressed with regard to the service of pre-assessment notice claimed to have been sent by the respondents through E-mail. If the present impugned proceedings are treated to be a show cause notice, calling for the

petitioner's objections, the ends of justice would be secured.

7. In the lightof the above observations, the impugned order in TIN 33264500797/2013-14 dated 29.01.2016 in W.P.No.15275 of 2016 and TIN 33264500797/2010-11, 2011-12 & 2012-13 dated 03.09.2015 in W.P.Nos.36269 to 36271 of 2015 are directed to be treated s a show cause notice. The petitioner is granted liberty to raise his objections within a period of 15 days from the date of receipt of a copy of this order and on receipt of such objections, the concerned respondent herein shall consider the same on its own merits and take appropriate course of action after giving due opportunity of personal hearing to the petitioner, if necessary through video conferencing. Consequently, the garnishing proceedings in Rc.No.A3/37/2015 dated 31.03.2016 is set aside. The respondent shall endeavor to complete such proceedings, atleast within a period of 60 days from the date of receipt of the objections.

8. With the above observations and directions, the Writ Petitions are disposed of. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commercial Tax Officer,
Panruti Rural,
Panruti-607 106.

2. The General Manager,
NTPC Limited, NTC Bhawan,
Scope Complex, Institutional Area,
Lodhi Road, New Delhi-110 003.

+1cc to the Spl Government Pleader(Taxes)in Sr.No.26868

W.P.Nos.15275 of 2016, 36269 to 36271 of 2015
and
W.M.P.Nos.13322 to 13324 of 2016
& M.P.Nos.1, 1 & 1 & 2, 2 & 2 of 2015

ss (co)
rr ii (03/09/2020)