IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.29993 of 2012

1 M/S.DISHNET WIRELESS LIMITED
SPENCER PLAZA 5TH FLOOR 769 ANNA NAGAR
CHENNAI-2 REP. BY K.RAGHURAMAN. ... Petitioner

Vs

1 UNION OF INDIA
REP. BY SECRETARY TO GOVERNMENT MINISTRY OF FINANCE DEPARTMENT OF REVENUE NEW DELHI.

2 AUTHORITY FOR ADVANCE RULINGS
MINISTRY OF FINANCE DEPARTMENT OF REVENUE
5TH FLOOR NMDC BUILDING YASHWANT PLACE
SATYA MARG CHANAKYAPURI NEW DELHI-21.

3 DIRECTOR OF INCOME TAX
(INTERNATIOINAL TAXATION) VII FLOOR ANNEXE
BUILDING 121 NUNGAMBAKKAM HIGH ROAD
CHENNAI-34.

4 ASSISTANT COMMISSIONER
OF INCOME TAX COMPANY CIRCLE 1(4) CHENNAI
AAYAKAR BHAVAN
NUNGAMBAKKAM CHENNAI-34.

5 ASSISTANT COMMISSIONER
OF INCOME TAX TDS CIRCLE I CHENNAI
AAYAKAR BHAVAN
NUNGAMBAKKAM CHENNAI-34. ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the case in AAR No.939 of 2010 and quash the impugned order dated 27.08.2012 passed by the second respondent herein and to consequently direct the second respondent to restore AAR No.939 of 2010 to file and dispose the same in accordance with law on merits.

For petitioner : Mr.Vishnu Mohan
for Mr.Satish Parasaran

For Respondents : Mr.Hema Murali Krishnan,
Senior Standing Counsel
for Respondents 1 to 4

Mr.S.Rajesh,
Junior Standing Counsel
for 5th Respondent

O R D E R
(made by Dr.VINEET KOTHARI, J.)

The present writ petition has been filed by the Assessee M/s.Dishnet Wireless Ltd., aggrieved by the order dated 27 August 2012, passed by the Authority for Advance Ruling (Income Tax), New Delhi, rejecting the application of the Assessee on the ground that the Assessee failed to produce the basic documents viz., basic contract dated 27 March 2004 entered between the consortium and the Assessee with Sri Lanka Telecom, and in the absence of the same, the terms of the contract between the petitioner and Sri Lanka Telecom ("SLT", for short) could not be comprehended to decide the questions raised before the said authority. The said authority has been created in Chapter 19(B) providing for the procedure for securing advance ruling by the said authority, headed by a former Judge of the High Court, to decide certain questions to avoid further disputes during the course of assessment proceedings. The relevant portion of the impugned order is quoted below for ready reference :-

> "5. When the application came up for hearing on 24.8.2012, the basic contract dated 27.3.2004 had not yet been produced. It is to be noticed that SLT from which the applicant derives rights is a member of the consortium. The rights of SLT spring from that Consortium agreement. It was clear to this Authority that for ruling on the questions raised by the applicant in a manner satisfactory to the conscience, an understanding of the terms and effect of that document was essential. Without understanding, the rights of the grantor, it was felt that it would not be possible to comprehend the rights conveyed to the grantee, the applicant.
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> 6. On 24.8.2012, when the matter was

taken up for hearing, the Consortium agreement had not been produced. No explanation was also forthcoming for its non-production. A paper book containing other relevant materials was produced at the hearing along with a brief written submission on some of the aspects. Counsel argued as if the production of the document dated 27.3.2004 was not an issue at all.

7. As noticed above, the applicant has been granted some rights or privileges by SLT based on an agreement. The basic question is what passes to that applicant under that agreement. To understand what passes, it is necessary to know the rights or the grantor. In the order application, the applicant had produced the basic document involved in that case and considerable arguments had also been advanced on the rights available to the grantor of the applicant in that case.

8. I find at the end of all the arguments on 24.8.2012, that it would be hazardous to venture to rule on the questions formulated without understanding the contents of the document dated 27.3.2004 and comprehending the rights available to SLT. Hence, I am constrained to decline to rule on the questions formulated in this application.

9. Hence, I decline to rule on the questions formulated and close the application leaving it to the applicant to raise its contentions before the Assessing Officer. The application stands disposed off. The Revenue is free to proceed in accordance with law.

10. Accordingly, the ruling is pronounced on this, the 27th day of August, 2012.

2. The learned counsel for the Assessee Mr.Vishnu Mohan, sought to urge before us that the said contract dated 27 March 2004, the petitioner is not a party and therefore, was unable to produce the same. He, however, sought to refer to the agreement between the petitioner and the SLT dated 24 August 2009 and wanted to read before us certain clauses of that agreement to submit that the questions raised before the Authority for Advance Rulings could be decided in the light of those terms and conditions.

3. The learned counsel for the Revenue however supported the impugned order.

4. Having heard the learned counsel for the parties we are satisfied that no interference is called for in the impugned order passed by the learned Authority for Advance Rulings.

5. Despite grant of several opportunities, the Assessee admittedly failed either to adduce the basic contract before the said authority nor could satisfy the said authority that it was impossible for the Assessee to produce the said basic documents. We fail to understand any cogent reason for the Assessee not to produce the same. The party to the said contract was admittedly in another contract with the present petitioner and therefore, the present Assessee could have definitely requested the party viz., Sri Lanka Telecom to supply a copy of the said agreement to provide and background and context to the Authority for Advance Rulings to decide the question on which such advance ruling was sought by the Assessee.

6. Without making any such efforts to satisfy the Authority that it was not possible for the Assessee to obtain such agreement, the Assessee cannot seek any interference, invoking the extraordinary jurisdiction under Article 226/227 of the Constitution of India for upsetting the said order.

7. The Assessee admittedly failed to satisfy the conditions and the requirements raised by the said authority concerned for deciding the question and therefore, no exception could be taken.

8. The writ petition is devoid of merits and same is liable to be dismissed and accordingly, it is dismissed. No costs. Consequently, M.P.No.2 of 2012 is also dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1 THE SECRETARY TO GOVERNMENT
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE NEW DELHI.

2 AUTHORITY FOR ADVANCE RULINGS
MINISTRY OF FINANCE DEPARTMENT OF REVENUE
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+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 2003
+1cc to Mr.Karthik Ranganathan, Advocate, S.R.No. 1708

W.P. No.29993 of 2012

EV(CO)
GN(17/02/2020)