IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Writ Petition Nos.213 to 219 of 2016
&
W.M.P.Nos118 to 124 of 2016

M/s. Welcon Equipment (I) Pvt. Ltd.
Rep. By its Director, Mrs. M.Malathi,
No.1829/1, 18th Main Road,
Udayam Colony,
Anna Nagar,
Chennai 600 040 ...Petitioner in all W.Ps.

..vs..

1.The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
No.57 Taylors Road,
Dowlath Tower,
7th Floor,
Chennai 600 010

2.The Joint Commissioner (CT),
Enforcement - I, Central,
PAPJM Buildings,
Greams Road,
Chennai 600 006 ...Respondents in all W.Ps.

Common Prayer :- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in TIN/33391021384/2007-08; 2008-09; 2009-10; 2010-11; 2011-12; 2012-13 and 2013-14, (all) dated 29.10.2015, respectively, and to quash the same.

For Petitioner(in all W.Ps.) : Mr. V.Sundareswaran

For Respondents(in all W.Ps.) : Mr. A.N.R.Prathap,
Govt. Advocate (Taxes)

C O M M O N O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.A.N.R.Prathap, learned Government Advocate (Taxes) for the respondents.

2. The petitioner has filed these writ petitions, challenging the assessment orders dated 29.10.2015 passed by the first respondent for the years 2007-08; 2008-09; 2009-10; 2010-11; 2011-12; 2012-13 and 2013-14. Since common issues are involved in all these writ petitions, they are disposed of by this common order.

3. The petitioner is engaged in the business of fabrication, supply and installation of water treatment plant and is registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. During the course of such business, the Enforcement Wing Officials inspected the place of business of the petitioner on 03.09.2014 and certain defects were alleged to have been noticed. Based on the same, the respondents issued notices to the petitioner (all) dated 24.07.2015 to which the petitioner has submitted their objections on 14.08.2015 explaining the alleged discrepancies / defects and requested to drop further proceedings. Without considering the same in a proper perspective, the Assessing Officer / R-1 has passed the impugned orders, levying proposed tax at 12.5%, but kept alive the issue of verification of buyer and seller as per Annexure - I by stating that the same will be finalized separately with respect to the result of cross-verification of other end dealer. Hence, these writ petitions.

4. The main ground of attack by the petitioner against the assessment orders in question is that, no opportunity was granted to the petitioner for production of documentary evidence before the authority for passing appropriate orders. He further submitted that the impugned orders are contrary to the law laid down by the Division Bench of this Court in the case of Madras Granites (P) Ltd Vs. Commercial Tax Officer, Arisipalayam Circle, Salem reported in (2006) 146 STC 642, wherein it has been specifically held that the Assessing Officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. Hence, according to the learned counsel, the impugned orders are liable to be quashed.

5. The learned Government Advocate (Taxes) was heard on the submissions made by the learned counsel for the petitioner.

6. Admittedly, the cause of action for issuing the pre-revision notices was on the basis of the proposal submitted by the Enforcement Wing Officials, pursuant to an inspection conducted in the place of business of the petitioner. When the petitioner submitted their objections to the pre-revision notices, the Assessing Officer has to independently adjudicate the matter and he shall not be influenced by the directions issued by the Enforcement Wing Officials. But he has not done so in this case. Further, no reasonable opportunity was provided to the petitioner for production of necessary documentary evidence before the authority for passing appropriate orders, as per Section 27(2) of the TNVAT Act. Without following the provision of law, the first respondent, Assessing Officer, has passed the impugned assessment orders. However, the petitioner / assessee, in all fairness, has remitted 25% of the disputed tax, at the time of admission of these writ petitions.

7. In such view of the matter, this Court is inclined to set-aside the assessment orders dated 29.10.2015 and are set-aside accordingly. The matters are restored to the file of the Assessing Officer / first respondent. The petitioner is directed to file necessary documentary evidence, so as to substantiate their claim that the transactions are not taxable, within a period of two weeks from the date of receipt of a copy of this order. If such documents are filed, the Assessing Authority shall look into all the documentary evidence and objections to be filed by the petitioner and pass appropriate orders on merits and in accordance with law that too after providing an opportunity of personal hearing to the petitioner, within a period of six weeks thereafter.

8. These writ petitions are allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1.The Assistant Commissioner (CT),
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Chennai 600 010

2.The Joint Commissioner (CT),
Enforcement - I, Central,
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Chennai 600 006

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.19405

+1cc to the Spl Government Pleader, S.R.No.19342

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EV(CO)
RN(08/06/2020)