IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.3484 of 2021 &
WMP.Nos.3991 & 3993 of 2021

M/s.Nagaraj & Co (P) Ltd.,
Rep by its Executive Director,
Mr.M.S.Raju Seshadrinathan,
Plot No.156, Developed Plot Industrial Estate,
perungudi, Chennai - 600 096. …Petitioner

Vs

The Assistant Commissioner (ST)
Sholinganallur Assessement Circle,
Integrated Commercial Taxes &
Registration Building,
Nandanam, Chennai - 600 035.
…Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records of the respondent in TIN:33980920907/2006-07, quash the impugned revised order of assessment dt.08.01.2021 in so far as it relates to the levy of Tax Deduction at Source under Section 13 of the Tamil Nadu Value Added Tax Act, 2006 relating to K.Decor and the consequential penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner: Mr.V.Sundareswaran

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O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner.

2. The petitioner has challenged order dated 08.01.2021, an assessment made in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('Act') for the period 2006-07. The revisions made originally had been challenged in W.P.Nos.6505 to 6511 of 2018 and this Court, vide order dated 22.03.2018, set aside the assessments, remanding the same for fresh

consideration directing the Officer to give a reasonable opportunity to the petitioner to file their objections.

3. Pursuant to order dated 22.03.2018, the petitioner has filed objections dated 16.05.2018. Thereafter, a notice came to be issued on 13.06.2018 granting an opportunity of personal hearing and also an opportunity to file further representation in addition to the reply filed by the petitioner on 12.06.2018. Letter dated 12.06.2018 is unavailable. Personal hearing was fixed on 19.06.2018.

4. The only issue that arises from the impugned order of assessment is a factual issue in regard to the deduction of tax at source on civil works said to have been carried out by the petitioner. Three parties were involved i) Tvl.Abi Builders ii) Tvl.Sriniram and iii) Tvl.KEP Dekors. As regards (i) and (ii), there is no dispute. Relevant documentation have been furnished by the petitioner and accepted by the Assessing Officer. As regards the third entity, the petitioner has stated before the Assessing Officer that KEP Dekors has shifted its office to Bangalore and it would, on receipt of the assessment order along with monthly or annual return and payment of tax receipts, produce the same. No offer was made as to the period within which the details would be produced. However the details were not filed before the authority and learned counsel for the petitioner submits that even as on date, the materials are unavailable. No material is placed before me to substantiate that KEP Dekors has been requested to furnish the documents on that the petitioner is pursuing the matter with that entity.

5. Reliance is placed on a decision of this Court in W.P.Nos.29713 to 29718 of 2015 dated 04.10.2016 where, on similar facts, learned counsel would say, this Court has set aside the assessments, remanding the matters to the respondent to conduct a thorough verification of the details of the transactions. The submissions of the petitioner therein to the effect that all contractors were registered dealers as on the date of those transactions they have been regularly filing returns before their respective Assesssing Officer and remitting tax in support of the contract works said to have been undertaken by them.

6. This decision will not come to the aid of the petitioner before me as there is no material in regard to the transactions in question qua KEP Dekors before me or to support the stand of the petitioner that sufficient efforts have been taken by it to obtain supporting materials from that party. In fact, even before me, learned counsel for the petitioner would concede to the position that relevant particulars such as Form S

or other contemporaneous and supporting documents are not available.

7. In such circumstances, the petitioner cannot expect the Court to issue a direction to the authorities to wait till ad infinitum for the petitioner to obtain relevant documents in support of the transaction in question and it is for the petitioner to have taken such efforts as are necessary and expedient to obtain such material in a timely manner. No legal infirmity is pointed out by the petitioner in the impugned order warranting interference under Article 226 of the Constitution of India.

8. In the light of the aforesaid observations, this Writ Petition is dismissed. Learned counsel for the petitioner seeks liberty to file a statutory appeal, since time has expired for filing the statutory appeal. If the statutory appeal is filed on or before 02.03.2021, subject to the compliance of all other statutory conditions including pre-deposit, the same shall be admitted by the appellate authority without reference to limitation. The petitioner is always at liberty to support its case before the appellate authority and the observations made in this order will not stand in the way of an independent appreciation of the appeal. No costs. Connected Miscellaneous Petitions are also dismissed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

Note: Registry is directed to
return the original impugned order.
To
The Assistant Commissioner (ST)
Sholinganallur Assessement Circle,
Integrated Commercial Taxes &
Registration Building,
Nandanam, Chennai - 600 035.

+1 cc to Mr.V.Sundareswaran Advocate sr10007
+1 cc to the Government pleader High Court, Madras
sr 10403

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