IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.8751, 8006, 8760, 8008, 12240,
8755, 8757, 10760 10765, 10380, 10385 of 2021
17735 & 17728 of 2020
and
WMP.Nos.13008, 13007, 11392, 11394, 11397, 11399, 8559, 8560, 8556, 8555, 9286, 9287, 9281, 9283, 9288, 9289, 9292, 9293, 10962, 10957 & 10963 of 2021
21980, 21984, 21977, 21974, of 2020

V.Jagadeesan
Contractor
No.321 Alangiyam Road
Dharapuram - 638 656
Tirupur District. ...Petitioner in W.P.No.8751 of 2021

M/s.Kuhan & Co
Rep.by its Partner V.Mohankumar ...Petitioner in WP.8006/21

A.Ganesan
Contractor ...Petitioner in WP.8760/21

M/s.Sri Veerasundari & Co
Rep. by its Partner P.Ragini ...Petitioner in WP.8008/21

M/s.Sri Ganapathy & Co
Rep. by its Partner C.Gnanaprakash ...Petitioner in WP.12240/21

V.Jagadeesan
Contractor ...Petitioner in WP.8757, 8755/21

M/s.C.S.Construction Company
Rep. by its Managing Partner
C.Semmalaiyappan ...Petitioner in WP.10760/21

M/s.C.S.Construction Company
Rep. by its Managing Partner
C.Semmalaiyappan ...Petitioner in WP.10765/21

M/s.R.P.Construction & Co
Rep. by its Managing Partner
C.Dhandapani ...Petitioner in WP.10380/21

M/s.R.P.Construction & Co

Rep. by its Managing Partner
C.Dhandapani ...Petitioner in WP.10385/21

S.Kuppusamy
Contractor ...Petitioner in WP.17735/20

N.Kandasamy
Contractor ...Petitioner in WP.17728/20

Vs.

The State Tax Officer
Dharapuram,
Tirupur District. ...Respondent in all WPs

Prayer in W.P.No.8751 of 2014: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certorari calling for the records on the file of the Respondent in its impugned proceedings made in TIN.33743021477/2014-15 dated 22.02.2021, TIN.33253023347/2015-16 dated 25.02.2021, TIN. 33743022477/2016-17 dated 27.02.2021, TIN.33323021611/2016-17 dated 27.02.2021, TIN.33083023101/2015-16 dated 25.02.2021, TIN. 33743021477/2015-16 dated 26.02.2021 TIN.33743021477/2016-17 dated 27.02.2021 TIN.33163022766/2015-16 dated 22.02.2021, TIN. 33163022766/2016-17 dated 27.02.2021, TIN. 33773021606/2015-16 dated 22.02.2021, TIN.33773021606/2016-17 dated 25.02.2021,TIN. 33093022368/2014-15 dated 10.03.2020,TIN. 33683021607/2014-15 dated 10.03.2020 and to quash the same as illegal and contrary to the scheme of the Act.

(All WPs)
For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.TNC Kaushik
Government Advocate

C O M M O N O R D E R

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.TNC Kaushik, learned Government Advocate for the respondent.

2. Orders of revision of assessments under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') are assailed before me. The periods in question are 2014-15 to 2016-17 and all the petitioners are works contractors, who, according to them, have been filing regular returns in terms of the provisions of the Act.

3. The Assessing Authority has proceeded to apply Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007 (in short 'Rules'). The Rules provide for a presumptive rate of taxation, as per which 30% shall be deducted from the total contract receipts and the balance 70% shall be the deemed sales value to be brought to tax.

4. According to the petitioners, it was not necessary to have applied the formula in all cases as the formula would be applicable only in those cases where the petitioner was not in a position to establish actual value of the deduction to be effected. According to them, they have produced all material before the Assessing Officer at the time of assessment in order for the Authority to arrive at the exact value of sales. If only the materials filed had been looked into, the Officer would have appreciated the actual sale value. However, this has not been done. Moreover, the assessments have been framed without an opportunity of personal hearing and hence the petitioners were unable to put forth their explanation in this regard.

5. The question of ascertainment of the sale value is one of fact and one which is best left to the officer. However, on the question of personal hearing, the admitted position is that the petitioners have not been heard prior to framing of the impugned assessments. The petitioners have placed on record an acknowledgment of receipt of certain details before the Authority, which have not been taken into consideration.

6. According to the counter filed by the respondents, the particulars filed were not material and hence not relevant for the purposes of assessment. Be that as it may, Section 27 of the Act provides for effective opportunity to be given to the petitioners prior to framing of assessment and this has been interpreted in a slew of matters to include opportunity of personal hearing as well.

7. In the light of the discussion as aforesaid, these assessments are liable to be set aside, as no personal hearing was afforded prior to framing of the same and I set aside the same. The petitioner shall appear before the Assessing officer on Tuesday the 20th of July, 2021 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioners and considering details available on record as well as any that may be furnished by the petitioners, assessments shall be framed de novo by way of speaking orders within a period of eight weeks from the date of personal hearing.

8. These writ petitions are allowed in the aforesaid terms. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
The State Tax Officer
Dharapuram, Tirupur District.

+1CC to Special Government Pleader (Taxes), Sr.No.32778, 32779, 32780, 32782, 32783, 32784, 32785, 32786/21

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RLD (CO)
K.RK. (23.07.2021)