IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WP.NOS.13657, 13665, 13668, 13671 & 13674 OF 2019
WMP.NOS.13720, 13722, 13723, 13726 & 13729 OF 2019

M/s.Riverside Dreamscapes Pvt. Ltd.,
Represented by its Managing Director Nithin Lakshmanan,
(S/o T.S.Lakshmanan, aged about 40 years),
Selma House, Aravenu,
Kotagiri-643 201.

... Petitioner in all WPs

Vs

The Commercial Tax Officer,
Kotagiri Assessment Circle,
Kotagiri.

... Respondent in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the respondent bearing TIN No.33642561170/2011-12, TIN No.33642561170/2012-13, TIN No.33642561170/2013-14, TIN No.33642561170/2014-15 and TIN No.33642561170/2015-16 respectively dated 11.04.2019, quash the same and consequently direct the respondent to provide opportunity to file effective reply.

(In all WPs)

For Petitioner	:	Mr.Hariharan for Mr.S.Raveekumar
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate

COMMON ORDER

These writ petitions challenge orders of assessment dated 11.04.2019 for the periods 2011-12 to 2015-16 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2.The petitioner is a company that claims to be family owned. It had developed 47 Villas in its own property and for the purposes of such development had, according to it, entrusted the construction to a sub-contractor, one M/s.M.G.S. Builder and Company, Coonoor. According to the petitioner, both the Contractor as well as it itself had paid tax under the compounding provisions not realizing that the project was one and the same and liability for tax would fall only upon one or the other.

3.While this is so, the enforcement wing had inspected the premises of the petitioner company as well as that of the builders and on the ground that the petitioner had made interstate purchase of timber which militates against its claim for compounding under Section 6 of the Act, had demanded and collected tax under Section 5 of the Act, which was challenged successfully by the petitioner in an earlier round of writ petitions.

4.Show cause notices were thereafter issued calling for the responses of the petitioner. The opportunities granted ranged from 20.08.2018 to 30.01.2019. In response to show cause notice dated 20.08.2018, the petitioner made a request on 06.09.2018 seeking 15 days time on the ground that a verification of its accounts was required to respond to the show cause notice.

5.The respondent also appears to have accommodated the requests for extensions of time, repeatedly sought for by the petitioner. On 30.01.2019, the officer pointed to the fact that time had been requested and granted upto 22.12.2018, but despite the grant of time, the required details had not been submitted. An opportunity of personal hearing was granted to the petitioner to appear on 13.02.2019 at 11.30 a.m., failing which orders of assessment would be passed.

6.In reply, the petitioner, by letter dated 12.02.2019, pointed out that a senior member of the family had, on account of the difficulties within the family, committed suicide and there were several issues within the family that had been referred to community Panchayat, pending resolution. They thus solicited 45 days time to submit an effective reply. On 12.03.2019, they sought 15 more days time to submit reply.

7.On 27.03.2019, 30 days time was again sought to submit a reply. Thus, and effectively there had been no response given for the notices issued from 20.08.2018 onwards and the matter had been dragged on till March 2019. While receiving the request dated 27.03.2019, the Assessing Authority has made a categoric note in the letter delivery book to the effect that though time would be granted, it would be limited only till 05.04.2019.

8.This would answer the objections of the learned counsel for the petitioner to the effect that had the officer not intended to grant the time sought for, a specific order should have been passed by him communicating this fact to the petitioner. He relies in this regard upon Circular No.7 dated 03.02.2014.

9.I have perused the relevant portion of the Circular that reads as follows:

> '3.In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Comissioners/Deputy Commissioners should verify at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.
>
> (a)Passing of orders:
> Fifteen days time-limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:-
> (i)After issue of notice calling for the objections, if any, further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not, as the case may be, only if there exists a genuine reason.
> (ii)Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised in short, the speaking order which is complete shall be passed.
> (iii)As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be in W.P.Nos.23646 of 2019 etc., intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.'

The direction of the Commissioner was to the effect that any request for extension of time shall be examined by the authority and reply furnished to the dealer regarding either extension or refusal of such request.

10.I am of the view that the requirement under the Circular has been fully satisfied in this case, since, even while receiving letter dated 27.03.2019, there is an endorsement made by the officer in the delivery book of the petitioner restricting the time sought till 05.04.2019. Thus, it is not open to the petitioner to contend that he was unaware of whether the time sought was granted or not.

11.On the ground of violation of principles of natural justice, therefore, I am of the categoric view that the petitioner has no case as sufficient opportunity has been granted to the petitioner and there has been no effective compliance to any of the notices that had been issued. However, there is one point that survives on merits, since the petitioner would contend that since the entirety of the project has been undertaken by the contractor who has remitted the tax liability, nothing survives in its hands.

12.It is a question of fact as to whether the entirety of the contract value has, in fact, been offered to tax by contractor. In this regard, learned counsel for the petitioner circulates a proceedings of the Assistant Commissioner (ST), Coonoor Circle, Coonoor in the case of MGS Builders and Company dated 22.05.2019 in support of its submission in this regard.

13.A perusal of the aforesaid order would not lead me to the categoric conclusion that the entire contract value has, in fact, been taxed in the hands of the contractor, as the details regarding the value of the contract and the various activities to be carried out by the contractor are not before me. In any event, even had they been before me, I would not be inclined to go through the same as that is a matter of assessment and involve a comparison of the scope of duty that was entrusted to the contractor and whether any scope remained to be fulfilled by the petitioner.

14.One thing is clear, if indeed the entirety of the contract value had been offered to tax by the contractor, there would be no liability that would survive in the hands of the petitioner. In this context, I may refer to one averment in the writ affidavit wherein the petitioner, at paragraph-3, states that -

> "The petitioner company constructed their own offices, restaurant and building for amenities and whereas they entrusted the job of construction of 47 villas to subcontractor M/s.M.G.S.Builders & Co., Coonoor."

15.This leads me to infer that while the construction of the 47 Villas had been entrusted to the sub-contractor, the scope of work that remained in the hands of the petitioner was the construction of its own offices and the restaurants and various amenities that would be shared by them with the Villas as well. In such an event, some portion of the contract value would be attributable to the petitioner also.

16.This being a question of fact, I am loathe to deliberate upon this aspect any further. In view of the discussion as above and there being neither violation of the principles of natural justice nor infirmity in the procedure followed by the authority and since the question that survives is a mixed question of law and fact that can only be answered by the authority, the petitioner is relegated to statutory appeal. Appeal if filed within a period of three (3) weeks from today will be entertained by the authority without reference to limitation.

17.On the question of pre-deposit, I am of the view that the preliminary question of whether any tax liability survives in the hands of the petitioner must be determined by the respondent at the first instance. Such a determination will be made by the respondent within three weeks from date of institution of the appeal, after hearing the petitioner.

18.If respondent is of the view that no tax liability subsists, then the appeals would become unnecessary and liable to be allowed. If on the other hand, there is some attribution of tax liability to the petitioner, then the condition relating to pre-deposit shall be enforced as against the petitioner and it is only after compliance therewith that the appeal shall be proceeded with, in accordance with law.

19.These writ petitions are disposed in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kbs

To

The Commercial Tax Officer,
Kotagiri Assessment Circle,
Kotagiri.

Copy To

The Section Officer,
E.R.Section,
High Court, Madras.
(to return the original order of assessment
to the petitioner)

+5ccs to Mr.S.Raveekumar, Advocate, S.R.No.39210

+1cc to the Special Government Pleader(Taxes), High Court,
Madras, S.R.No.39444

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CA(CO)
RLP(11/07/2022)