IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.17266, 17270, 17274 & 17276 of 2020 and
WMP.Nos.21353, 21347, 21360 & 21364 of 2020

Tvl.RPP INFRA PROJECTS LTD.,
Represented by its Whole Time Director,
A.Nithya,
No.454, R.N.Palayam, Poondurai Road,
Erode-638 002. ... Petitioner in all WPs

Vs

1.The Assistant Commissioner (CT),
Brough Road Assessment Circle,
Erode.

2.The State Tax Officer,
Brough Road Assessment Circle (Back Year)
Erode.

3.The State Tax Officer
Kangeyam Assessment Circle,
Kangeyam. ... Respondents in all WPs

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the 2nd respondent in TIN: 33863000750/2013-14, TIN: 33863000750/2012-13, TIN: 33863000750/2014-15 and TIN: 33863000750/2015-16 dated 28.09.2020 respectively and quash the same as being without jurisdiction and authority of law and contrary to the principles of Natural Justice.

(In all WPs)
For Petitioner : Mr.R.Senniappan

For Respondents : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

COMMON ORDER

Heard both Mr.Senniappan, learned counsel for the petitioner and Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate for the respondents.

2.When the matter had come up earlier on 20.04.2023, I passed the following order:

> *'The challenge is to assessments for the periods 2012-13 to 2015-16 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The petitioner alleges that R3 being the State Tax Officer, Kangeyam ought not to have passed the impugned orders, as the petitioner was all along being assessed by R1 being Assistant Commissioner (CT) Brough Road Assessment Circle.*
>
> *2.In response, the respondents rely upon G.O.Ms.No.122 Commercial Taxes and Registration (B1), dated 17.12.2015 and proceedings of R1 dated 14.12.2018. The G.O. delegates power of assessment to various officers in terms of Section 2(5) of the Act.*
>
> *3.Hence, order dated 14.12.2018 has been passed in Roc.No.2043/A3/2018, identifying certain specified assessments on the file of R1 and transferring the same to R3. The petitioner's assessments have been so transferred to R3. Thus, according to the respondents, there is no infirmity in the assumption of jurisdiction by R3.*

4.However, the respondents do not appear to have taken note of clause (vi) under the proviso to the Government Order which states thus:

> *'(vi) in respect of any escaped turnover detected by the Enforcement Wing or the Audit Wing or the Business Intelligence Unit or the Inter-State Investigation Cell, if the pre-assessment notice under Sections 16 or 16-A of the erstwhile Tamil Nadu General Sales Tax Act, 2006 has been issued by any of the assessing authority specified in clauses (1) to (5), then final assessment shall be made by such authority only.'*

5.In the present case, R1 has issued notice for revision of assessment under Section 27 of the Act on 26.10.2018. Thus, R3 has received written submissions and has also afforded opportunities of personal hearing. The question that arises is as to whether R1 ought to have completed the assessments on the basis of the notices issued or whether it was proper for R3 to have intervened in the proceedings.

6.Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate requests a days' time. At her request, list on 24.04.2023 as item No.1 in the regular list.'

3.Today, Ms.Amirtha confirms that clause (vi) as extracted above is fully applicable to the assessing authorities and hence it is clear that the order of assessment ought to have been passed only by R1 and not R3 as has been done in this case.

4.Thus, the impugned orders of assessment being bereft of jurisdiction are set aside and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

5.Learned Government Advocate seeks liberty to redo the assessments. I am not inclined to accept the request for the following reasons. The periods of assessment relate to 2012-13 to 2015-16. Those assessments would have to be made under the provisions of the Tamil Nadu Value Added Tax Act, 2006, which stands subsumed with the Tamil Nadu Goods and Services Taxes Act, 2017, with effect from 01.07.2017. That apart, the error is one of jurisdiction and is clearly contrary to the Notification issued by the Special Commissioner, Commercial Taxes.

24.04.2023

vs
Index : Yes / No
Speaking Order
Neutral Citation: Yes

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Erode.

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Brough Road Assessment Circle (Back Year)
Erode.

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Dr.ANITA SUMANTH,J.

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