IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.2846, 2849 & 2858 of 2024
and W.M.P.Nos.3098, 3100 & 3104 of 2024

In all WPs.

Tvl. Stanely Hitech Construction Company (P) Ltd.,
Represented by its Managing Director,
Mr.S.Saravanan,
No.189E, New Building,
Bungalow Street,
Tiruchengode-637211. ...Petitioner

Vs.

The State Tax Officer,
(also known as the Commercial Tax Officer),
Tiruchengode (Town) Circle. ... Respondent

Prayer in W.P.No.2846 of 2024: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in TIN:33653182304/2015-2016 dated 30.11.2023 and quash the same.

<u>Prayer in W.P.No.2849 of 2024:</u> Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in Roc.No.1477/2019/A3 dated 22.01.2024 along with the annexed Form GST DRC-13 dated 22.01.2024, quash the same, while forbearing the 1st respondent from proceeding to initiate recovery proceedings pending the disposal of the application dated 06.01.2024 for the assessment year TNVAT 2013-2014 and further application dated 01.12.2023 in respect of the assessment year TNVAT 2015-2016.

<u>Prayer in W.P.No.2858 of 2024:</u> Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records on the file of the respondent in Roc.No.1477/2019/A3 in Form 4 dated 02.09.2022 along with his consequential Form 5, Form 7 & Form 7A all dated 09.01.2023 as reiterated on 03.03.2023 and quash the same.

In all WPs.

For Petitioner	: Mr.K.A.Parthasarathy
For Respondent	: Mr.T.N.C.Kaushik, Additional Government Pleader (T)

<u>COMMON ORDER</u>

By these three writ petitions, the petitioner assails orders dated 30.11.2023, 22.01.2024 and 02.09.2022 and consequential notice dated 09.01.2023, respectively.

2. Upon issuance of order dated 26.04.2019, the petitioner submitted a communication dated 22.01.2020. In response thereto, the respondent issued notice to reconsider the earlier order dated 26.04.2019 by notices issued on 07.02.2020 and 30.09.2020. Thereafter, the petitioner received a notice dated 16.10.2023 calling upon the petitioner to opt for the Tamil Nadu Samadhan scheme in respect of the amounts specified in order dated 26.04.2019. In those circumstances, the petitioner raised objections and also submitted representations dated 01.12.2023 and 06.01.2024.

3. Learned counsel for the petitioner challenges the order dated 30.11.2023 on the ground that the respondent resurrected the earlier order dated 26.04.2019 after admitting that the said order contains errors apparent on the face of the record. In this connection, he refers to notice dated 07.02.2020, wherein it was admitted that the original order was issued on the basis of incorrect facts. He also points out that subsequent notice dated 30.09.2020 also proceeds on the basis that the original order dated 26.04.2019 is incorrect. In these circumstances, learned counsel contends that the order dated 30.11.2023 cannot be sustained.

4. In response to these submissions, Mr.T.N.C.Kaushik, learned Additional Government Pleader, points out that the dealer had failed to produce documentary evidence to establish the taxable value of work executed under the five contracts referred to in the said order. Consequently, he submits that the respondent proceeded on the basis of the total contract value as reflected in Form S.

5. Upon receipt of the order dated 26.04.2019, the petitioner raised objections by communication dated 22.01.2020. In such communication, the petitioner pointed out that it undertook dam repair work which largely involves labour and that the material portion of such work is limited. On receipt of this communication, the State Tax Officer, by notice dated 07.02.2020, appears to have accepted that the original order was issued on incorrect basis and that it has errors apparent on the face of the record. Thereafter, the original order appears to have been resurrected under the impugned order dated 30.11.2023. This course of action was clearly unsustainable. It also appears that the order dated 30.11.2023 was issued without providing a personal hearing or a reasonable opportunity to the petitioner.

6. For reasons set out above, the impugned order dated 30.11.2023 is set aside and the matter is remanded for reconsideration. Pursuant to the above mentioned order, the respondent issued garnishee orders and such garnishee orders are assailed in W.P.Nos.2849 & 2858 of 2024. In view of the assessment order being set aside, the garnishee orders are also liable to be set aside. Therefore, these garnishee orders are set aside by leaving it open to the respondent to initiate recovery action, if warranted, pursuant to the rectification proceedings. Until the rectification petitions dated 06.01.2024 and 01.12.2023 for assessment years 2013-2014 and 2015-2016, respectively, are considered and disposed of on merits, the respondent is restrained from initiating coercive action against the petitioner.

7. These writ petitions are disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

17.04.2024
(2/3)

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

The State Tax Officer,
(also known as the Commercial Tax Officer),
Tiruchengode (Town) Circle.

W.P.Nos.2846, 2849 & 2858 of 2024
and W.M.P.Nos.3098, 3100 & 3104 of 2024

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