IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos. 1694, 1697 and 1698 of 2022
and
C.M.P. Nos.11798, 11827 and 11835 of 2022

M/s.Rail One Projects Pvt., Ltd.,
Rep. By its authorised signatory Mr.I.Mallikarjuna Rao,
No.6/2 (Old No.15/C),
Jaganatha Nagar Main Road,
Arumbakkam, Chennai 600 106. ...Appellant in all Writ Appeals

v.

The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
No.1, Greams Road, Chennai 600 006. ...Respondent in all Writ Appeals

Prayer in W.A.No.1694 of 2022: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order of the learned Single Judge in W.P.No.37203 of 2015 dated 08.07.2021.

Prayer in W.A.No.1697 of 2022: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order of the learned Single Judge in W.P.No.37202 of 2015 dated 08.07.2021.

Prayer in W.A.No.1698 of 2022: Writ Appeal filed under Clause 15 of the

Letters Patent, praying to set aside the order of the learned Single Judge order in W.P.No.37201 of 2015 dated 08.07.2021.

For Appellant in all Writ Appeals	:Mr.C.Baktha Siromani
For Respondent in all Writ Appeals	: Mr.V.Prashanth Kiran Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by MOHAMMED SHAFFIQ,J.)

The present writ appeals are filed challenging the common order passed by the learned Judge dismissing the writ petitions challenging the assessment orders dated 31.07.2015 for the assessment years 2010-11 and 2011-12 and dated 08.07.2015 for the assessment year 2012-13 on the ground of existence of alternative remedy.

2. The appellant is engaged in the execution of works contract. The impugned orders of reassessment were passed involving the following issues:

a. Excessive claim of labour charges during the above assessment years ranging from 61% to 70%, which was rejected and deduction granted only to the extent of statutory deduction of 30%, which would apply in cases where the labour claim was not supported by books of accounts / documents.

b. Purchase Tax under Section 12 of the TNVAT Act on the premise that purchases were made from unregistered dealers.

c. Processing Loss.

d. The claim of TDS was rejected for non-filing of statutory form in support of their claims as provided under Section 13 of the TNVAT Act.

3. The learned Judge, while rejecting the writ petitions as stated in the opening paragraph, had granted liberty to file appeal before the appellate authority after finding that the appellant had not even filed their replies, in response to the revised notices.

4. It is seen that all the above issues involve examination of disputed questions of facts, an exercise, which is alien to writ jurisdiction under Article 226 of the Constitution of India.[1] It would be evident from the records that the question as to the extent of labour involved in execution of works contract is a question of fact which ought to be demonstrated / proved on the

1 State of Orissa v. Dr.Binapani Dei, AIR 1967 SC 1269; Union of India v. Rapidur (India) Pvt. Ltd., (2001) 9 SCC 208.

basis of documentary evidence. Secondly, levy of purchase tax on the basis of purchases made from unregistered dealers also gives rise to disputed question of facts. Processing loss is again an aspect, which would require examination of facts of each case. The claim of deduction of TDS requires filing of statutory form, again an exercise which is alien to writ jurisdiction. Thus, we see no reason to interfere with the order relegating the appellant to avail statutory remedy of appeal. The appellate authority is the appropriate authority / forum to examine the above disputed questions of fact. It is trite law that the power under Article 226 of the Constitution of India is neither an appellate or a revisional jurisdiction nor can writ jurisdiction be converted into a Court of appeal.[2] Yet another reason as to why we find that the order of the learned judge rejecting the writ petitions and granting liberty to file appeal, does not warrant interference is that despite revised notices having been issued by the assessing authority, the appellants have not filed their objections.

5. In the circumstance, we see no reason to interfere with the order of the learned Judge. The appellant is granted liberty to avail statutory remedy within a period of 4 weeks from the date of receipt of a copy of this judgment

2 State of Uttar Pradesh v. Dr. Vijay Anand Maharaj, AIR 1963 SC 946; Veerappa Pillai G. v. Raman and Raman Ltd., AIR 1952 SC 192

subject to complying with all conditions relating to appeal including pre-deposit, if any.

6. Accordingly, the writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
29.04.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation : Yes/ No
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To

1. The Assistant Commissioner (CT),
   Vadapalani Assessment Circle,
   No.1, Greams Road, Chennai 600 006.

<u>R.MAHADEVAN, J.</u>
<u>AND</u>
<u>MOHAMMED SHAFFIQ, J.</u>

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<u>W.A.Nos.1694, 1697 and 1698 of 2022</u>

29.04.2024