(2016) 01 MAD CK 0165

In the Madras High Court

Case No : W.P. Nos. 39378, 39379, 39380, 39381, 39382, 39383, 39384, 39385 of 2015, W.A. Nos. 22, 23, 24, 25, 26, 27, 28 and 29 of 2016

Arihant Unitech Reality Projects Ltd. APPELLANT

Vs

The Assistant Commissioner (CT), Kilpauk Assessment Circle and Others RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 2(21), Section 27(3)

Citation : (2016) 01 MAD CK 0165

Hon'ble Judges : M. Jaichandren and S. Vimala, JJ.

Bench : Division Bench

Advocate : P. Rajkumar, for the Appellant; S. Kanmani Annamalai, AGP, for the Respondent

Final Decision : Disposed Off

Judgement

M. Jaichandren, J.—W.P. No.39378 of 2015 to W.P. No.39385 of 2015 & W.A. No. 22 of 2016 to W.A. No.29 of 2016:

1. Since the issues involved in all the writ petitions and the writ appeals are similar in nature, they have been taken up together and a common Judgment is being passed.

2. The writ petitions in W.P. No.39378 of 2015, W.P. No.39379 of 2015, W.P. No.39380 of 2015, W.P. No.39381 of 2015, W.P. No.39382 of 2015, W.P. No.39383 of 2015, W.P. No.39384 of 2015 and W.P. No.39385 of 2015, had been filed praying that this Court may be pleased to issue writs of Certiorari to call for and to quash the impugned proceedings of the first respondent, dated 30.10.2015.

3. It has been stated that the petitioner company is a public limited company engaged in the business of development and sale of land. It is registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006, as well as the

Central Sales Tax Act, 1956. While so, it had incurred certain expenses for the leveling of the land, laying of roads and for the creation of other infrastructural facilities, before the plots were advertised and sold. The petitioner had not constructed any flats or residential apartments for its customers. The petitioner had sold 213 plots in phase I and 89 plots in phase II of its development scheme, for which sale deeds had been registered.

4. It has been further stated that, in spite of the fact that the petitioner had filed detailed objections, dated 17.6.2015, before the respondents 2 and 3 and it had also filed the objections, dated 21.9.2015, before the first respondent, explaining the fact that it had effected only sale of land, which cannot be considered as ''goods'' falling under Section 2(21) of the Tamil Nadu Value Added Tax Act, (hereinafter referred to as ''the Act''). There was no construction of flats or civil works contract executed by the petitioner, and therefore, there had been no transfer of goods involved in such transaction. However, the first respondent had considered the land development and construction charges incurred by the petitioner, up to the period 2011-12, as the sale consideration, for the construction of the flats and had determined the deemed sales value and had levied tax and also levied penalty, under Section 27(3) of the Act, in the impugned proceedings, when there was no proposal to levy such penalty in the pre-revision notices, dated 20.8.2015.

5. The learned counsel appearing for the petitioner had contented, inter alia, that the impugned proceedings issued by the first respondent are arbitrary, illegal and void, as no opportunity of personal hearing had been given to the petitioner before such proceedings had been issued.

6. The learned counsel appearing for the petitioner had pointed out that the petitioner had sent a letter, dated 19.9.2015, to the first respondent requesting that extension of time may be granted, till 5.10.2015, for filing its reply and had also made a request to allow the representative of the petitioner to appear in person to present its case, appropriately, on a convenient date, thereafter. However, the first respondent had proceeded to pass the impugned proceedings without considering the request made by the petitioner. As such, the first respondent had passed the impugned proceedings without following the principles of natural justice and therefore, this Court may be pleased to set aside the said proceedings and to remit the matter back to the first respondent to pass appropriate orders relating to the relevant year concerned, by considering the objections submitted by the petitioner and by giving an opportunity of hearing to the petitioner to put forth its case.

7. The learned counsel had further submitted that the first respondent may cause an inspection of the property concerned by way of spot verification, if an application is made by the petitioner making such a request.

8. Per contra, the learned counsel appearing for the respondents had submitted that the impugned proceedings had been issued by the first respondent, after

considering the objections submitted by the petitioner. There is no error in the findings of the first respondent with regard to the calculation of the deemed sale value and the tax liable to be paid by the petitioner, under the relevant provisions of the Act. The petitioner had also been granted a hearing, on 28.9.2015. As the petitioner had not appeared for the personal hearing and as no further objections had been filed along with the supporting documents to substantiate its claim, the proposal levying the tax on the petitioner had been confirmed and penalty had also been imposed on it, under Section 27(3) of the Act, as per the said impugned proceedings.

9. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, it is noted that the petitioner had requested for extension of time, till 5.10.2015, for filing its objections and for fixing a date for personal hearing, by way of a letter, dated 19.9.2015. However, the first respondent had passed the impugned proceedings, dated 30.10.2015, granting an opportunity of personal hearing to the petitioner and without granting extension of time, as prayed for by the petitioner in the letter, dated 19.9.2015.

10. In such circumstances, we find it appropriate to set aside the impugned proceedings of the first respondent, dated 30.10.2015, and to remit the matters back to the first respondent, for passing fresh orders, after giving an opportunity of personal hearing to the petitioner and by considering the further objections to be filed by the petitioner. The petitioner shall file its objections, if any, on or before 1.2.2016. The authorised representative of the petitioner shall appear before the first respondent, at 10.30 a.m., on 1.2.2016, for a personal hearing, along with the relevant documents relating to the assessment year concerned, to substantiate the claims made by the petitioner. It is also made clear that if the petitioner makes an appropriate application, the first respondent shall cause an inspection of the property in question, by way of a spot inspection, before passing appropriate proceedings, with regard to the amount of tax and penalty payable by the petitioner, if any, as per the relevant provisions of the Tamil Nadu Value Added Tax Act and the rules framed thereunder. The assessee shall fully co-operate in the enquiry to be held by the first respondent so as to enable the first respondent to pass appropriate orders, on merits and in accordance with law, as expeditiously as possible.

11. Accordingly, the writ petitions are disposed of with the above directions. No costs. Connected M.P. No.1 of 2015 to M.P. No.1 of 2015 are closed.

12. The writ appeals in W.A. Nos.22 of 2016, W.A. No.23 of 2016, W.A. No.24 of 2016, W.A. No.25 of 2016, W.A. No.26 of 2016, W.A. No.27 of 2016, W.A. No.28 of 2016 and W.A. No.29 of 2016, had been filed against the common order, dated 15.12.2015, made in W.P. Nos.39378 to 39385 of 2015 in M.P. Nos.1 to 1 of 2015.

13. The learned single Judge by his order, dated 15.12.2015, had passed the

following order:

"Mr.V.Haribabu, learned Additional Government Pleader takes notice and seeks time to get instructions. Interim stay on condition that the petitioner pays 25% of the tax demanded in each of the writ petitions within a period of four weeks from the date of receipt of a copy of this order, failing which, the interim stay granted shall stand vacated automatically without any further reference to this Court."

14. In view of the order passed in the above writ petitions, in W.P. No.39378 of 2015, W.P. No.39379 of 2015, W.P. No.39380 of 2015, W.P. No.39381 of 2015, W.P. No.39382 of 2015, W.P. No.39383 of 2015, W.P. No.39384 of 2015 and W.P. No.39385 of 2015, no further orders are necessary in the present writ appeals. Hence, the writ appeals stand closed. No costs. Connected C.M.P. No.323 of 2016, C.M.P. No.324 of 2016, C.M.P. No.325 of 2016, C.M.P. No.326 of 2016, C.M.P. No.327 of 2016, C.M.P. No.328 of 2016, C.M.P. No.329 of 2016, C.M.P. No.330 of 2016, C.M.P. No.331 of 2016, C.M.P. No.332 of 2016, C.M.P. No.333 of 2016, C.M.P. No.334 of 2016, C.M.P. No.335 of 2016, C.M.P. No.336 of 2016 and C.M.P. No.337 of 2016 are closed.