IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1725 of 2015
And
M.P.No.1 of 2015

Ulundurpet Expressways Private Limited
(Formerly known as GMR Ulundurpet Expressways Private Ltd.,)
Represented by its Manager
Mr.Annamalai Muthu ... Petitioner

Vs.

The Assistant Commissioner,
Commercial Tax Department
Villupuram Assessment Circle - I
Villupuram ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records comprised in impugned order TIN 33154682587 / 2013-14 dated 27.11.2014 on the file of the respondent, quash the same and consequently direct the respondent to pass orders afresh after giving the petitioners a reasonable opportunity of being heard.

For Petitioner : Mr.Mohammed Shaffiq

For Respondent : Mr.Hariharan
Additional Government Pleader

O R D E R

The petitioner has come forward with this writ petition seeking for issuance of Certiorarified Mandamus calling for the records comprised in impugned order TIN 33154682587 / 2013-14 dated 27.11.2014 on the file of the respondent, quash the same and consequently direct the respondent to pass orders afresh after giving the petitioner a reasonable opportunity of being heard.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent. With the consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

3.The case of the petitioner is that the impugned order proceeds on the reasons other than the reasons stated in the notice and is liable to be set aside and an opportunity should be given to him and only thereafter final order could be passed.

4.The petitioner was issued with a notice dated 05.09.2014 stating that the petitioner has not filed the monthly returns for the year 2013-14 and also for the year 2012-13. The petitioner submitted

that he has given a reply / objections on 26.09.2014 stating that he has been filing monthly returns in Form I every month before the due date through online and submitted that statement along with his letter dated 26.09.2014. On 27.11.2014, without considering the statement of the petitioner, the impugned order dated 27.11.2014 has been passed.

5.Though the petitioner has been issued with notice for non reporting of purchase turnover and though dealers have not objected the question raised about the failure in reporting of purchase turnover and that they have admitted the purchase omission, it is further stated that the purchases referred to in the notice relates to purchase availed from the sub-contractors.

6.The respondent has not disputed the fact that the order impugned contains reasons other than the one mentioned in the notice dated 05.09.2014.

7.In view of the decision of this Court reported in [2011] 40 VST 399 (Mad) (S.Kathiresan Vs. Deputy Commercial Tax Officer, (Registration Cell), Puducherry), which portion is extracted below

> "A perusal of the order passed further shows that quite apart from the reasons given as a basis for issuance of a show-cause notice, the order further refers to yet another reason that the petitioner had failed to file extract as regards the declaration form C as prescribed under sub-rule (10) of rule 14. A reading of the order thus reveals that more than one reason had resulted in persuading the officer to pass order of cancellation. Considering the fact that the status as a registered dealer confers certain rights and privilege on the dealer under the Act, in fairness to the rights of the petitioner, the respondent should have intimated about not only the rejection of the request seeking time but also the grounds on which the

proposal is made, so that the petitioner has the opportunity to rebut the same.

As rightly contended by the learned counsel for the petitioner, if the order proceeds on the reasons other than those stated in the notice, in fairness to the claim of the petitioner, the respondent should have indicated the same too in the notice. In the circumstances, I have no hesitation in accepting the plea of the petitioner that the order is passed without observing the principles of natural justice and the same has to be set aside."

I have no hesitation in setting aside the impugned order giving liberty to the petitioner to appear before the Authority concerned on 16.02.2015 and make submissions / objections along with documents, if any and it is open to the Authority concerned to consider the same and pass orders on merits without being influenced by the earlier order which has been set aside by this Court in this writ petition.

8.With the above observation, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

pri

To

1.The Assistant Commissioner,
Commercial Tax Department
Villupuram Assessment Circle - I
Villupuram

1 cc to M/s. Mohammed Shaffiq, Advocate, Sr. 4839
1 cc to Spl.Government Pleader, (Taxes)Sr. 4816

W.P.No.1725 of 2015
And
M.P.No.1 of 2015

CA (CO)
kk 6/2