IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.34593 of 2014
and
M.P.No.1 of 2014

M/s.R.R.Parkon Private Limited,
represented by its Authorised Signatory
Mr.Balachandran Dharmen
No.9, West C.I.T. Nagar East Road,
Chennai - 600 035. .. Petitioner

vs.

The Commercial Tax Officer,
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records of the respondent in TIN/33461542575/2008-09, quash the impugned order dated 14.11.2014.

For Petitioner : Mr.V.Sundareswaran

For Respondents: Mr.Manoharan Sundaram,
Additional Government Pleader (T)

O R D E R

The petitioner has come forward with the present writ petition challenging the order of the respondent passed in TIN/33461542575/2008-09, dated 14.11.2014.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. The grievance of the petitioner is that when the Appellate Authority has given a specific direction, the Assessing Officer will have to obey the same and cannot pass an order ignoring the findings of the Appellate Authority and the approach adopted by the Assessing Officer is perfunctory.

4. The relevant portion of the order of the Appellate Authority dated 11.10.2013 passed in Appeal No.63/2013 VAT, reads as follows:

> "In view of the above, the levy of tax at 12.5% on the disputed tax of Rs.19,43,001/- is set aside and remitted back to the assessing officer with a direction to levy tax on the 70% of contract receipts i.e 70% on Rs.2,82,000/- for the year 2008-09 by granting deduction of 30% towards labour charges as prescribed under Rule 8 (5) of the TNVAT Act 2006 and pass revision orders in accordance with Law. Accordingly, this portion of the appeal is Remanded.
>
> Penalty: As regards the levy of penalty, it is contended that there is no concealment of any purchases or sales or willful non disclosure of any taxable turnover. The method of arriving at the turnover liable to tax u/s 5 or 6 cannot be a basis to invoke the penal provisions. The assessing officer levied penalty u/s.27(3) of the Act at 150% of the tax due. The legal point of taxability cannot be equated to the rate of tax dispute and where is no culpability on the part of the appellants to invoke the penal provisions of section 27(3) of the Act. In this case on hand, the assessing officer has revised the assessment u/s.27 and levied higher rate of tax for the reason that the appellants are not eligible to pay tax u/s.6 of the Act. Further the assessing officer has estimated the deemed sale value based on the purchases and sales figures available in the books of accounts. The assessing officer has also not given any finding for the applicability of penal provisions with evidence acceptable in a Court of Law. The levy of penalty is not automatic whenever there is a revision or levy of higher rate of tax or quantum of tax as held by the Honourable Madras High Court.
>
> With the above observation, the levy of penalty is also set aside and remanded back to the assessing officer to consider the judicial pronouncements and to consider the tax payments so far made and pass fresh orders in accordance with Law. Accordingly, this portion of the appeal is remanded."

5. The Assessing Officer, on remand, has passed an order on 14.11.2014, which reads as follows:

> "A perusal of purchase bills revealed that they have purchased unassembled components of car parking system, motor, chain etc. and have erected car parking system and deemed sale of parking system was effected, which is not the declared goods liable to be taxed at 4%, it attract 12.5% as a unclassified item. In view of the above rate of tax adopted does not call for any interference.
>
> Though they have effected a purchases to an extent of

Rs.19,63,814.00 and carried out the works contract, they have declared only Rs.282000/- in the monthly returns filed under self-assessment scheme. Thus declaring a lower turnover in the monthly return amounts to willful suppression of assessable turnover for which levy of penalty is warranted."

6. The respondent is unable to refute the contention of the petitioner. After hearing both parties, this Court is of the view that the Assessing Officer is bound to follow the decision of the Appellate Authority and pass a final order.

Accordingly, this Writ Petition is allowed. The order of the respondent passed in TIN/33461542575/2008-09, dated 14.11.2014, is set aside. The matter is remitted back to the first respondent to pass orders afresh after affording opportunity to the petitioner and by taking into account the order of the Appellate Authority in full, more particularly, the portion which is extracted supra. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

gm

To

The Commercial Tax Officer,
Nandanam Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

1 cc to Mr.V. Sundareswaran, advocate, sr. 7748
1 cc to Spl.Government Pleader,(Taxes) Sr. 7156

Writ Petition No.34593 of 2014

KK (CO)
kk 26/2