IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.19518 of 2015
and
M.P.No.1 of 2015

M/s. The Indian Hume Pipe Co.Ltd.,
rep.by Deputy General Manager,
New No.361,
Lloyds Road,
Gopalapuram,
Chennai - 600 086 ...Petitioner

vs.

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
6, Greenways Road,
II Floor,
Taluk Office Building,
R.A.Puram,
Chennai - 600 028. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33900720064/2007-08, quash the order dated 31.3.2015 passed therein.

For petitioner : Mr.R.L.Ramani, Senior Counsel, for M/s.B.Raveendran

For respondent : Mr.V.Haribabu, Additional Government Pleader (T)

ORDER

Mr. V.Haribabu, learned Additional Government Pleader (Taxes), takes notice for the respondent.

2. With the consent of both the parties, this Writ Petition is taken up for disposal at the admission stage itself.

3. This Writ Petition is directed against the impugned assessment order dated 31.03.2015 passed by the Assistant Commissioner (CT), Royapettah Assessment Circle, Chennai, for the Assessment Year 2007-08. By this impugned order, the assessment was revised under section 27(3) of the TNVAT Act by levying tax in addition to the output tax already declared in the monthly returns, and imposed penalty.

4. In the affidavit filed in support of the Writ Petition, it is stated that the petitioner is a Company registered under the Indian Companies Act and is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner was engaged in the business of execution of works contracts for the TWAD Board, Chennai, and turnkey projects for the provision of water supply as well as other works. The petitioner placed purchase orders on suppliers situate in other States who manufactured DI/PVC/MS pipes as per the specifications of the TWAD Board. The sale invoices raised by the other State suppliers were addressed to the petitioner c/o. TWAD Board Work site address. It is thus clear that the interstate movement of goods from other States to Tamil Nadu was occasioned by the work order placed by TWAD Board on the petitioner. The petitioner offered to tax the turnover from works contracts executed by it in terms of section 5 of the Tamil Nadu Value Added Tax Act, 2006 after computing the same as per the above extracted Rule 8(5) of the TNVAT Rules, 2007. The enforcement wing officers sought to compute all incomes mentioned in the balance sheet of the petitioner company irrespective of the issue whether the income pertains to movables or immovables for the purpose of levying tax and whether the same pertains to the Tamil Nadu office or other Branch Offices situate in the other States. The defects alleged by the enforcement wing officers were simply repeated by the respondent in his revision notice dated 4.2.2013. The petitioner explained that the contract should be read as a whole and brought to the attention of the respondent various other clauses in the other agreement which supports the petitioner's claim of deduction. However, all of a sudden on 12.06.2015, after two years, the petitioner was served with the impugned order dated 31.3.2015, which is liable to be set aside.

5. Learned Senior Counsel appearing for the petitioner would submit that the grievance of the petitioner is that the notice for re-assessment was issued as early as on 4.4.2013 and after filing detailed objections on 14.3.2013 and various personal hearings, a detailed reply was filed on 7.6.2013. Therefore, the petitioner was under the impression that after he filed the objections, the re-assessment proceedings was dropped. There is a delay of two years in passing the impugned assessment order after issuance of notice. It is a peculiar case where notice was issued by one personnel and assessment order was passed by another personnel, which is clearly contrary to the settled principles of natural justice. The respondent has wrongly passed the impugned order stating that the petitioner have not placed any material to substantiate their claim though the petitioner have placed photographs, certificate of inspection in relation to purchases for Aruppukkottai CWSS, sample invoice indicating details of consignment in connection with Virudhunagar CWSS, Consignment Notes issued by Transport Carrier and Work Test Certificate. The learned Senior Counsel would also submit that tax cannot be levied on the basis of the income shown in the balance sheet of the company because it pertains to all the offices/branches of the company. Tax under the TNVAT Act, 2006 can be levied only in respect of sales effected in the State of Tamil Nadu and the petitioner furnished the figures pertaining to the State of Tamil Nadu separately. However, this aspect has not been considered by the respondent. Ultimately, the learned Senior counsel would state that since the notice was issued by one personnel and after hearing, the assessment order was passed by another personnel, therefore, the petitioner must have been given a benefit of personal hearing before passing the assessment order. In passing the impugned order, the respondent has violated the principles of natural justice. Therefore, on these grounds, the assessment order is liable to be set aside, the learned Senior Counsel pleaded.

6. Heard the learned Additional Government Pleader on the above contention and perused the assessment order.

7. It is an admitted position that the notice was issued by one personnel and after hearing the impugned assessment order was passed by another personnel. In such circumstances, before passing the impugned order, the petitioner ought to have been given a personal hearing by the respondent as contemplated under section 22 (4) of the TNVAT Act, 2006. Therefore, on this ground of violation of principles of natural justice, I am inclined to set aside the impugned assessment order and accordingly, the same is set aside and the Writ Petition is allowed. No costs. The connected

Miscellaneous Petition is closed. The matter is remanded to the file of the respondent for fresh hearing from the petitioner. It is needless to mention that the petitioner shall be given personal hearing and thereafter, the first respondent shall pass appropriate orders on merits and in accordance with law.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asvm

To

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
6, Greenways Road, II Floor,
Taluk Office Building, R.A.Puram,
Chennai - 600 028.

1 CC to M/s.B.Raveendran, Advocate SR.No.33382

1 CC to the Government Pleader, SR.No. 33304

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AD (CO)
PSI (03.09.2015)