IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM:

THE HON'BLE MR.JUSTICE R. MAHADEVAN

W.P.No.26916 of 2015
and M.P.Nos.1 & 2 of 2015

R. Anand [Petitioner]

Vs

1 The Assistant Commissioner(CT)
Omalur Assessment Circle Omalur
Salem District.

2 The Commercial Tax Officer
Omalur Assessment Circle Omalur
Salem District.

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records on the files of the 2nd respondent in TIN. 33923243508/2015 dated 23.7.2015 and quash the same as being without jurisdiction and authority and further direct the 1st respondent to issue Form 'S' certificate to the Petitioner.

For petitioner : Mr.R.Senniappan

For respondents : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed challenging the order of the 2nd respondent dated 23.7.2015 and to direct the 1st respondent to issue from S certificate to the petitioner.

3. The case of the petitioner is that he is a contractor and registered dealer and assessee on the file of the 1st respondent with TIN No.33923243508 under the TNVAT Act. The petitioner entered into an agreement with the Tamil Nadu Water Supply and Drainage Board for laying pipeline. The return in Form I was filed through 'e' filing and

thereby made payment of tax every month. The petitioner had accordingly applied for certificate in form "S" in accordance with Section 5 of the TNVAT Act. As per Section 13 of the said Act, the TWAD Board has to deduct 2% as TDS out of the total payment to the petitioner. However, according to the petitioner, if form "S" from the 1st respondent, then the TWAD Board need not deduct 2%, provided the petitioner has to make payment of tax to the 1st respondent in accordance with the provisions of the Act.

4. Further, by paying a sum of Rs.2,15,800/- as tax, the required form "S" has been obtained on 27.02.2015 from the office of the 1st respondent for the execution of the value of the work around 4 crores for the assessment year 2014-15, out of the contract value of Rs.11 crores. For the balance contract value of Rs.7 crores, he applied for certificate in form "S" for the value of Rs.4 crores on 22.6.2015 and for the balance 3 crores, the petitioner has to apply for and in fact the petitioner had made the payment of Rs.2 lakhs in May 2015. After the said payment, the petitioner filed letter dated 26.06.2015 requesting to furnish form S certificate so as to enable him to furnish the same to the TWAD Board, who in turn has to submit the same before the respective assessing officer. However, the 2nd respondent suddenly issued the impugned notice dated 23.07.2015 rejecting the request for the reason that on verification of the form WW in respect of the assessment year 2013-14, an amount of Rs.37,78,024/- was made available in form WW whereas in Form I return filed,the same was not made available. Therefore, only after receiving the reply for the said deficiency, requisition of form S will be considered. The petitioner made payment of Rs.89,347/- as tax value on the said amount at the time of filing of form WW on 31.2.2015 itself, which also had been taken into consideration by the 1st respondent as evidenced from the bank statement. The said amount relates to the assessment year 2014-15, whereas in the impugned order the year of assessment has been wrongly mentioned as 2013-14. The petitioner immediately filed a reply dated 27.07.2015 explaining the said facts. It is the contention of the petitioner that when a request is made for furnishing form S certificate for the year 2015-16, rejection of the 2nd respondent on the ground that there was discrepancy in the previous year is unsustainable. The assessing authority has no jurisdiction to refuse to issue the same by citing irrelevant reasons. It is his submission that the said query has already been cured by giving letter dated 27.07.2015, even after there is no response. Hence, the petitioner is before this Court.

5. The learned counsel for the petitioner would submit that the impugned notice issued by the 2nd respondent is liable to be quashed as the same has been passed without jurisdiction and contrary to the principles of natural justice. Further, the learned counsel submitted that the impugned notice issued is not in conformity with Section 5 and 13 of the TNVAT Act. That apart, according to the learned counsel for the petitioner, the reason given by the 2nd respondent cannot be sustained in the eye of law, since the same is not at all relevant for

the assessment year in question. According to him, though the assessment year is 2015-16, pointing out certain errors relating to the assessment year 2013-14 relating to Form WW , denial of Form S for the assessment year 2015-16 is unsustainable. Hence, the learned counsel for the petitioner has prayed for allowing of the writ petition.

6. The learned Additional Government Pleader (Taxes) has made his submissions supporting the impugned order.

7. This Court, considering the submissions made by the learned counsel on either side, finds force in the submission made by the learned counsel for the petitioner. For the purpose of issuance of Form S, the petitioner made a representation on 27.07.2015, enclosing all the required details. However, there is no response. Though the Form S required by the petitioner relates to the assessment year 2015-16, the 2nd respondent in the impugned order, denied the same pointing out defects relating to Form WW in respect of the earlier assessment year 2013-14, which cannot be sustained. Hence, this Court is of the view that the impugned order is liable to be set aside.

8. In view of the above, the impugned order dated 23.07.2015 is set aside and the matter is remitted back to the respondents for issuing Form S as claimed by the petitioner, after completing all the formalities. Such exercise shall be completed, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

rg

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1 The Assistant Commissioner(CT)
Omalur Assessment Circle, Omalur
Salem District.

2. The Commercial Tax Officer
Omalur Assessment Circle, Omalur
Salem District.

+1 C.C. To MR.R.SENNIAPPAN, Advocate in SR.NO.54113 of 2015

+1 C.C. To Special Government Pleader (Taxes), High Court, Madras, in SR.NO.54221

W.P.No.26916 of 2015

CA(CO)
sd : 09/10/2015