IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.27139 of 2015

Tvl.Ace Star Properties Pvt. Ltd.,
Rep. by its Chief Financial Officer (CFO),
B.Ravishankar,
No.12, South Mada Street,
Sri Nagar Colony,
Saidapet, Chennai 600 015.
... Petitioner

-Versus-

1.The Commercial Tax Officer,
Adayar I Assessment Circle,
Chennai 600 028.

2.The Appellate Deputy Commissioner (CT),
Chennai (East),
Chennai 600 006.
...Respondents

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certioari calling for the records of the 1st respondent relating to TIN/33020863429/2009-10 dated 12.05.2014 and culminating in the order of the 2nd respondent in AP.No.& Year : VAT.282/2014 dated 29.06.2015 and to quash the above said order.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.V.Haribabu, AGP

ORDER



Challenging the order passed by the 2nd respondent dated 29.06.2015 dismissing the appeal in VAT.282/2014 preferred as against the order with regard to levy of tax on TDS and the consequential levy of penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006, as not maintainable, the petitioner has come forward with this writ petition.

2. It could be seen from the impugned order that during the course of hearing of the said appeal before the appellate authority, the petitioner did not press his appeal regarding penalty levied under Section 27(4) of the TNVAT Act for wrong availment of input tax credit.

3. The case of the petitioner company in brief is that it is a works contractor and a registered dealer with the respondent under the Tamil Nadu Value Added Tax Act, 2006 [in short, "the TNVAT Act"]. Its registration number is TIN/3302086349/2009-10. The petitioner company has been filing returns regularly and for the assessment year 2009-10 also they have filed returns promptly. As per Section 22(2) of the TNVAT Act, the assessment is deemed to have been completed for the year 2009-10. While so, on 06.05.2010, 07.05.2010 and 08.05.2010, the officials of the respondent department inspected the business place of the petitioner and, during such inspection, there were certain defects noticed by the officials. The 1st respondent, based on the audit report and invoking Section 27 of the TNVAT Act, issued pre-revision notice for which the petitioner filed a detailed reply. Not being satisfied with the same, the 1st respondent levied tax on TDS and also levied penalty. Challenging the same, the petitioner preferred an appeal to the 2nd respondent, who, in turn dismissed the appeal on the ground that no appeal would lie as against the dispute entirely over TDS, a revision alone would lie. It is the said order now under challenge in this writ petition.

4. Heard both sides and also perused the records carefully.

5. For the assessment year 2009-10 with regard to the dispute relating to TDS, the impugned order came to be passed under Sections 27(3) & 27(4) of the TNVAT Act.

6. According to the learned counsel for the petitioner, the said order was questioned before the appellate authority on making necessary pre-deposit of 25% of disputed tax amount and the appeal was numbered and posted for hearing. Further, according to him, after having heard the appeal, on 29.06.2015, the appellate authority, the 2nd respondent herein rejected the contentions of the petitioner and dismissed the appeal as not maintainable for want of jurisdiction holding that a revision alone will lie as against the order appealed.

7. It is not in dispute that as against the order passed under Section 27(3) of the TNVAT adjudicating the dispute which is solely on TDS a revision alone will lie.

8. When that be so, pointing out the above said position, instead of entertaining the appeal, the 2nd respondent ought to have returned the papers to the petitioner so as to enable him to represent the papers before the revisional authority.

9. In view of the above, this court is inclined to set aside the impugned order of the 2nd respondent to the extent it relates to dismissal against levy of tax on TDS and the consequential levy of penalty under Section 27(3) of the TNVAT Act.

10. In the result, the writ petition is allowed. The impugned order of the 2nd respondent dismissing the appeal as against levy of tax on TDS and the consequential levy of penalty under Section 27(3) of the TNVAT Act, for want of jurisdiction, is set aside and the 2nd respondent is directed to return all papers to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of such papers, the same shall be presented by the petitioner before the revisional authority complying with all the formalities within a period of two weeks thereafter. On such presentation, the authority concerned shall entertain the same without any reference to the period of limitation and dispose of the same within a period of six weeks from the date of taking the revision on file on merits and in accordance with law. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

kmk

To

1.The Commercial Tax Officer, Adayar I Assessment Circle,
Chennai 600 028.
2.The Appellate Deputy Commissioner (CT), Chennai (East),
Chennai 600 006.

1 cc to Mr.R.Sivaraman, Advocate Sr.No.46695
1 cc to Special Government Pleader(Taxes).Sr.No.46820

W.P.No.27139 of 2015

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pmk.6.10.2015