IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.32019 of 2015
and
M.P.Nos. 1 & 2 of 2015

M/s. Gemini consolidated Projects Pvt Ltd.,
Rep. by its Authorized Signatory
Mr.A. Arun Kumar
No.16 Race View Colony 3rd Street
Guindy Chennai - 600 032 [Petitioner]

Vs

The Commercial Tax Officer
Chidambaram - I Assessment Circle
No.65/1 West Car Street
Chidambaram-608 001 [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the entire records in connection with the TIN.33394442768/2013-14 dated 14.01.2015 and assessment order dated 09.04.2015 on the file of the respondent quash the same and consequently direct the respondent to take into consideration the documents produced by the petitioner in their revision petition dated 24.06.2015 and the documents already available in the file of the respondent after affording an opportunity of personal hearing to the petitioner to produce the documents as required by the respondent and pass a reasoned order on merits in accordance with law.

For petitioner : Mr.K.V.Subramanian, Senior Counsel for M/s K.V.Subramanian Associates

For respondents : Mr.V.Haribabu, AGP(T)

ORDER

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. The writ petition has been filed challenging the pre-assessment notice dated 14.01.2015 and assessment order dated 09.04.2015 on the file of the respondent and to direct the respondent to take into consideration the documents produced by the petitioner in their revision petition dated 24.06.2015 and the documents already available on the file of the respondent, after affording an opportunity of personal hearing to the petitioner to produce the documents as required by the respondent and pass a reasoned order on merits in accordance with law.

3. The petitioner Company is a registered dealer under the TNVAT and CST Acts, dealing only labour contracts. On 20.04.2013, the petitioner Company received labour work order from Larsen & Toubro Construction, Chennai in respect of Boiler Pressure Parts Erection work at 2 x 600 MW STEPC Thermal Power Project, Cuddalore, Tamil Nadu. The petitioner was awarded only labour contract to execute certain erection work and only labour charges were agreed to be paid. The purchase of consumables and machinery for executing the labour contract awarded to the petitioner Company by L&T are only for the purpose of labour contract and therefore, the company has not availed any input tax credit. The petitioner Company started its operation in 2013. Further, according to the petitioner, the person who was given the job of submitting the returns originally, failed to submit the returns to the respondent in time. Therefore, he was replaced and another auditor was given the job of submission of returns. Hence, the petitioner Company could not submit the required statutory returns in time. Thus, the annual return for the year 2013-14 was submitted belatedly. It is the further submission of the petitioner that on 14.01.2015, the respondent issued pre-assessment notice indicating non availability of documents and rejected the annual return under the best of judgment and assessed tax due by also imposing penalty. On 24.03.2015, the petitioner company submitted its reply along with L&T work order, CST Purchase details and VAT purchase details. However, on 09.04.2015, the respondent, confirming the proposal without considering the records produced and without affording an opportunity. Aggrieved over the same the petitioner is before this Court.

4. The learned Senior counsel for the petitioner would submit that without understanding the transactions underlying, the respondent issued the pre-assessment notice dated 14.01.2015 and though the petitioner submitted a reply with the important documents, without considering the same, the impugned order came to be passed. It is his further submission that no opportunity was given to the petitioner to produce the documents mentioned in the assessment order dated 09.04.2015 and hence there is violation of principles of natural justice. Further, according to the learned Senior counsel, the impugned order is a non speaking order, without any application of mind, repeating and reiterating the pre-assessment notice already issued.

5. The learned Senior counsel further submitted that the impugned order passed by the respondent without allowing the petitioner to produce the documents as well as to substantiate the sale transactions took place during 2013-14. Hence, the petitioner filed a rectification petition on 24.06.2015 to the respondent under Section 84 of the TNVAT Act, however, no order has been passed till date. The learned Senior counsel further submitted that the entire documents are very much available with the petitioner and if an opportunity is provided to the petitioner, the same would be furnished to the respondent, who shall be directed to pass appropriate orders in respect of the assessment year 2013-14.

6. The learned Additional Government Pleader (Taxes) on the other hand submitted that since the annual returns were filed after a lapse of 16 months and the petitioner company having not furnished the sales details and purchase code etc. under the best of judgment, the impugned order came to be passed.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. Due to the non-availability of required documents during the relevant period of time, the petitioner was not able to produce those documents to the respondent. Hence, in the absence of the relevant materials, so as to pass an order of assessment on works contract, the impugned order came to be passed. Since there is no error apparent on the face of the record, the petition under section 84 of the Act was not considered.

9. In view of the submission made by the learned Senior Counsel for the petitioner that the petitioner is having all the required documents so as to furnish the same to the respondent and since the

impugned order came to be passed only on the ground of non production of documentary evidences, this Court is inclined to grant the petitioner one more opportunity for producing those relevant documents before the respondent.

10. Accordingly, the impugned order dated 09.04.2015 is set aside and the matter is remitted back to the respondent for passing orders afresh. The petitioner is permitted to file all the required documents within a period of two weeks from the date of receipt of a copy of this order and on such filing, necessary order be passed by the respondent on merits and in accordance with law, within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner. It is made clear that no further time shall be granted to the petitioner. Since the impugned order dated 9.4.2015 is set aside, the petition filed by the petitioner under section 84 of the TNVAT Act, dated 24.6.2015 does not survive.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Chidambaram - I Assessment Circle
No.65/1 West Car Street,
Chidambaram-608 001

1 CC to Mr.K.V.Subramanian, Advocate SR.No. 54949

1 CC to the Government Pleader, SR.No. 55376

W.P.No.32019 of 2015

KU (CO)
PSI (12.10.2015)