IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.35414 of 2015
and M.P.No. 1 of 2015

M/s.MAX Builders ... Petitioner
rep. by its Partner,
Mr.N.Madhivanan
No.G.49, Vasantham, VOC Nagar,
Chennai 600 106.

Vs

The Assistant Commissioner (CT)
Vadapalani Assessment Circle
Chennai.
... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling to call for the records of the respondent's order dated 13.03.2015 in TIN-33451466290/2013-2014, and quash the same.

For petitioner : Mr.Adithya Reddy
For respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the 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. Challenging the assessment order passed by the respondent dated 13.03.2015, the petitioner has filed the present writ petition.

3. The case of the petitioner is that the petitioner being a civil work contractor is a registered dealer under the TNVAT and CST Acts and an assessee on the file of the respondent herein. The petitioner filed returns in Form-I under Section

6 of the TNVAT Act for the works done by him and paid tax at the rate of 2% on the entire works contract turnover and availed input tax credit in terms of Section 6 of the Act. However, by oversight the petitioner did not give a letter to the respondent exercising its option to pay tax under Section 6 of the Act and hence, the petitioner was not entitled to the lower rate of tax @ 2%, but was entitled to claim ITC.

4. However, the respondent issued notice dated 12.01.2015 under Section 22(4) of the Act proposing to reject the petitioner's returns filed in Form-I. In the said notice dated 12.01.2015, the respondent had proposed to levy tax on the entire receipts by deducting 30% towards labour charges and treated the balance 70% as taxable turnover. The respondent has also stated that the petitioner failed to file Form-WW as provided under Section 63-A of the Act. Since no reply had been filed by the petitioner herein, the respondent proceeded to confirm the proposal in the notice dated 13.03.2015. Hence, the petitioner is before this Court.

5. According to the learned counsel for the petitioner, since one of the partners of the company had been suffering from some serious illness, they have not replied the notice dated 12.01.2015. However, the petitioner had chosen to file the revised returns on 03.06.2015 and has also paid tax as per the revised returns. The revised returns were returned by the respondent, on the ground that the petitioner had not availed the opportunity earlier and the revised returns filed were beyond the time limit prescribed by the respondent. It is the contention of the learned counsel for the petitioner that without examining the documents and books of accounts, the respondent had rejected the revised returns, which is incorrect and arbitrary and also amounts to violation of principles of natural justice. The learned counsel for the petitioner further adds that the impugned order has been passed against the decision of this Court reported in 2009(2) CTC 302 (Ponnusamy and another vs. DRT Coimbatore and another).

6. At this juncture, the learned counsel for the petitioner submitted that the petitioner is inclined to challenge the impugned order before the appellate authority and he may be permitted to file an appeal, which may be directed to be entertained without raising any issue with regard to limitation.

7. Heard the learned Additional Government Pleader (Taxes) for the respondent, who has no objections for such an order being passed.

8. Considering the facts and circumstances of the case and considering the submission made by the learned counsel for the petitioner, the petitioner is permitted to file an appeal before the appellate authority, within a period of two weeks from the date of receipt of a copy of this order. On such filing of the appeal, the Appellate Authority shall entertain the same, without raising any issue with regard to limitation and pass orders on merits and in accordance with law, after affording due opportunity to the petitioner, as expeditiously as possible. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT)
Vadapalani Assessment Circle
Chennai.

+1 cc to Special Government Pleader Taxes sr.60558
+1 cc to Mr.Adithya Reddy Advocate sr.60775

W.P.No.35414 of 2015

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