IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.36404 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Collective Constructions
represented by its Partner ...Petitioner

Vs

1. The Assistant Commissioner (CT) (FAC)
   Anna Nagar Assessment Circle,
   No.1B, Lakshmipuram 2nd Street,
   New Avadi Road, Villivakkam,
   Chennai 600 049.

2. The Branch Manager,
   Indian Bank,
   Gummidipoondi Branch
   Gummidipoondi. ...Respondents

Writ petition filed under 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the impugned proceedings of the first respondent in TIN: 33361326514/2013-2014 and quash the order dated 24.08.2015 as passed contrary to the provisions of the TNVAT Act and also against the principles of natural justice and further direct the first respondent to grant an opportunity to the petitioner to file its objections and documents and thereafter pass a fresh assessment order in accordance with law.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader

ORDER

The petitioner has filed this writ petition, to quash the impugned order dated 24.08.2015 passed by the first respondent for the assessment year 2013-14 and to direct the first respondent to pass a fresh assessment order, on merits and in accordance with law, after giving due opportunity to the petitioner.

2.According to the petitioner, they duly filed their returns for the Assessment Year 2013-14. Thereafter, a notice dated 13.08.2015 came to be issued, calling for objections, if any, by the petitioner to the proposals to assess the differential turnover and to levy penalty, within seven days. In response to the same, the authorised representative of the petitioner appeared before the first respondent and sought further time for filing their objections. However, the first respondent, without granting sufficient time to the petitioner, passed the impugned order, alleging that there was an escapement of turnover, which was left out for assessment. Aggrieved against the same, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that the first respondent issued notice calling for their objections to the proposed assessment within seven days time only, which is insufficient to the petitioner. The learned counsel for the petitioner further submitted that any assessment pursuant to the notice is to be passed, after complying with the statutory provisions.

4.Heard both sides.

5.Admittedly, notice relating to proposed assessment came to be issued to the petitioner on 13.08.2015, granting seven days for filing objections, for which, the petitioner sought for further time. The TNVAT rules provide that sufficient time for filing objections must be given as well as personal hearing should also be provided before passing any orders on merits. Despite the same, the first respondent, without granting further time, passed the impugned assessment order.

6.Further, the first respondent also attached the bank account of the petitioner, against which, the petitioner filed WP.No.35422/2015, wherein, this Court passed an order dated 03.11.2015, directing the petitioner to pay 25% of the tax demanded in the proceedings dated 28.10.2015 and on production of proof of such payment, the bank attachment effected by the first respondent was directed to be lifted forthwith and also permitting the petitioner to operate their bank account over and above the sum of Rs.20 lakhs.

7.The conditional order dated 03.11.2015 passed by this court was complied with by the petitioner and the same is also confirmed by the learned Additional Government Pleader appearing for the first respondent.

8.Since the impugned assessment order came to be passed, without granting sufficient time for filing objections and without analysing any of the issues raised by the petitioner, this Court deems it appropriate to quash the same. Accordingly, the impugned order dated 24.08.2015 passed by the first respondent is quashed. The matter is remanded back to the first respondent for passing fresh assessment order, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. The said exercise shall be carried out within a period of six weeks from the date of receipt of a copy of this order. Since the assessment order dated 24.08.2015 for the year 2013-14 itself is quashed, the conditional order dated 03.11.2015 made in WP.No.35422 of 2015 is relaxed.

9.The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT) (FAC)
   Anna Nagar Assessment Circle,
   No.1B, Lakshmipuram 2nd Street,
   New Avadi Road, Villivakkam,
   Chennai 600 049.

2. The Branch Manager,
   Indian Bank,
   Gummidipoondi Branch
   Gummidipoondi.

1 CC to Mr.P.Rajkumar, Advocate SR.No. 63402

1 CC to the Spl.Government Pleader (Taxes), SR.No. 63483

W.P.No.36404 of 2015

UG (CO)
PSI (26.11.2015)