IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2015

CORAM :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

WP No. 4308 of 2015
and
M.P. No. 1 of 2015

M/s. Abir Infrastructure Pvt Ltd
rep. by Deputy Manager (Accounts)/
Authorised Signatory
Mr. P. Nagaraja n
No.7, Ground Floor, EID Parry Compound
Judge Bungalow Road
Cuddalore ... Petitioner

Versus

The Assistant Commissioner (CT)
Cuddalore (Town) Assessment Circle
Cuddalore ... Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records comprised in impugned order in TIN No. 33454383759/2010-11 dated 19.01.2015 on the file of the respondent, quash the same.

For Petitioner : Mr. Mohammed Shaffiq

For Respondent : Mr. V. Haribabu
Additional Government Pleader (Tax)

ORDER

Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent.

2. The petitioner has come forward with this writ petition praying to quash the order dated 19.01.2015 passed by the respondent, by which, the respondent determined the taxable turn over of the petitioner company at Rs.75,47,02,495/- and directed the petitioner to pay a sum of Rs.8,40,41,474/- towards the tax due.

3. The petitioner is a registered company and are assessee on the file of the respondent. According to the petitioner, they were

awarded four separate and independent contracts by M/s. Coastal Oil and Gas Infrastructure Pvt Ltd., by which the petitioner has agreed to set up the storage tanks and systems to the specifications of the said company at NOCL Refinery near Cuddalore. According to the petitioner, the first two contracts are in the nature of work contract, while the third contract is a supply contract. On the other hand, the fourth contract is a pure labour work on which appropriate service tax is being paid in terms of the Finance Act, 1994. According to the petitioner, for the four contracts, they maintain separate books of accounts and they reported the turnover separately under the respective statues i.e., Tamil Nadu Value Adeed Tax Act and Central Sales Tax Act. In effect, the third contract involving the supply from outside Tamil Nadu are not forming part of the contract which has been opted for payment of Value Added Tax on composition basis. In those circumstances, a notice dated 17.02.2014 was issued by the respondent proposing to reject the benefit of composition scheme to the petitioner under Section 6 of the TNVAT Act for having allegedly made inter-state purchases and also proposed to impose penalty. On 14.03.2014, the petitioner submitted a detailed reply stating that inter-state transaction was effected with reference to specific contract for supply and sale of goods under supply contracts, which is independent of civil and road works and also raised objections on the method adopted for computation of taxable turnover. However, by a notice dated 12.09.2014, the respondent sought a reconciliation of the turnover relying upon form R and T which relates to TDS and called for submission of details. In and by the said notice, the respondent objected to filing monthly returns in Form L and Form I under TNVAT Act with regard to separate contracts. Therefore, a reply letter dated 07.10.2014 was submitted by the petitioner furnishing the reconciliation details. However, by a notice dated 29.10.2014, the respondent declined to accept the submissions of the petitioner by stating that a dealer having one TIN number cannot file different monthly returns for a year. It is further stated that as the petitioner effected inter-state purchases, the compounded rate permitted under Section 6 of the TNVAT Act will be rejected and the turnover will be assessed to tax under Section 5. Immediately, the petitioner sent a letter dated 10.11.2014 and sought for a personal hearing to submit documentary evidence in support of their defence. Subsequently, on 20.11.2014, the petitioner submitted their written submissions. Thereafter, on 24.11.2014, the petitioner submitted another letter seeking to clarify certain doubts. Notwithstanding the above, the respondent, without affording an opportunity of hearing to the petitioner has passed the impugned order determining the taxable turn over of the petitioner company at Rs.75,47,02,495/- and directed the petitioner to pay a sum of Rs.8,40,41,474/- being the tax due.

4. The learned counsel for the petitioner would contend that before passing the impugned order, the respondent did not afford an opportunity of hearing to the petitioner and thereby violated the

basic principles of natural justice. On that ground, the learned counsel for the petitioner seeks to set aside the impugned order.

5. On the above contention, I heard the learned Additional Government Pleader (Tax) appearing for the respondent and perused the materials placed.

6. On perusal of the impugned order, it is seen that before determining the tax amount due, the respondent did not afford an opportunity of hearing to the petitioner. In fact, a letter dated 10.11.2014 was sent by the petitioner specifically seeking for an opportunity of personal hearing to appraise the respondent regarding the transactions they have made and to produce documents in support of such stand. However, the impugned order has been passed in violation of the principles of natural justice. Therefore, the impugned order is liable to be set aside.

7. In the result, the impugned order is set aside. The writ petition is allowed. No costs. The matter is remanded back to the respondent for fresh consideration. The respondent is directed to afford an opportunity of hearing to the petitioner before determining the tax liability due and payable by the petitioner. The petitioner is also directed to appear before the respondent on 20.04.2015 on which date, the respondent shall hear the representative of the petitioner in compliance with the principles of natural justice and thereafter pass orders on merits and in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh

To

The Assistant Commissioner (CT)
Cuddalore (Town) Assessment Circle
Cuddalore

+1cc to Mr.Mohammed Shaffiq, Advocate, S.R.No.15193
+1cc to the Speccial Government Pleader(Taxes), S.R.No.15065

WP No. 4308 of 2015

JP(CO)
CA(01/04/2015)