IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8703 of 2015
And
M.P.No.1 of 2015

M/s. Spectrum Decors (Chennai) Private Ltd.
[Petitioner]
Rep. by its Managing Director
R.Jyothi Prakash
No.1 Chitra Enclave
SBI Officers Colony
1st Main Road Arumbakkam
Chennai-106. ...Petitioner

Vs

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle
Chennai-10. ...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN. 3371146134/2006-07 and quash the assessment order dated 10.03.2015 passed therein.

For Petitioner : Mr.V.Sudakar
For Respondent : Mr.V.Haribabu, AGP(T)

O R D E R

The petitioner has come forward with this writ petition challenging the order of the respondent dated 10.03.2015.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) who took notice for the respondent.

3.1 The case of the petitioner is that a pre-assessment notice dated 10.10.2014 was issued to the petitioner proposing to disallow the benefit of payment of tax at compounded rates under Section 6(1) of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the TNVAT Act"] on the ground that the petitioner had effected inter-state purchases during the assessment year 2009-2010.

3.2 For the sake of convenience, Section 6(1) and 6(2) of the TNVAT Act are extracted below:-

"6.Payment of tax at compounded rates by works contractor:-(1)Notwithstanding anything contained in this Act, every dealer, [other than the dealer who purchases goods from outside the State or imports goods from outside the country] may, at his option, instead of paying tax in accordance with Section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:-

(i) Civil works contract:	Two percent of the total contract value of the civil works executed;
(ii) Civil maintenance works contract:	Two per cent of the total contract value of the maintenance works executed;
(iii)Allotherworks:contract	Four percent of the total contracts value of the works executed.

(2) Any dealer, who executes works contract, may apply to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract, his option to pay the tax under sub-section (1) and shall pay the tax during the year in the monthly instalments and for this purpose, he shall furnish such return within such period and in such manner as may be prescribed".

3.3 The petitioner is stated to have filed its objections on 12.11.2014 stating that all their purchases during the assessment year 2009-2010 was effected locally and hence entitled to pay tax at compounded rates in terms of the provisions of Section 6(1) of the TNVAT Act, which is extracted supra.

3.4 It is the grievance of the petitioner that without giving any reply, the respondent has issued another notice on 03.02.2015 stating that on verification of the Balance Sheet of the petitioner, it is evident that the payment of customs duty for the year 2006-2007 and therefore, not entitled to the benefit of payment of tax at compounded rates. The respondent has also sought for the details of sources of purchases to the tune of nearly Rs.2 crores reflected in the Balance Sheet and thereafter the respondent has passed the assessment order confirming the proposals to deny the benefit of payment of tax at compounded rates to the petitioner. Aggrieved against the said order, the petitioner is before this Court.

4. According to the learned counsel for the petitioner, levy of tax on the purchase turnover of nearly Rs.2 crores is bad in law. Further, according to him Section 5 of the TNVAT Act, deals with levy of tax on transfer of goods involved in works contract and that under Section 6(1) of the TNVAT Act, every dealer engaged in the execution of works contract may at his option instead of paying tax under Section 5 of the TNVAT act, pay tax at compounded rates. The learned counsel for the petitioner submitted that when the dealer intended to pay tax at compounded rates in terms of Section 6(2) of the TANVAT Act, he may apply to the assessing authority along with the first monthly return of the financial year or in the first monthly return after the commencement of the works contract his option to pay at compounded rate. Further, according to him, Section 6(1) of the TANVAT Act was amended with effect from 2007 and that the benefit of payment of tax at compounded rates was restricted to works contractors who purchase goods locally within the State and not to works contractors who purchase goods from outside the State or imports goods from outside the Country.

5. The learned counsel for the petitioner further submitted that in respect of the assessment year 2006-2007, the petitioner had opted to pay tax at compounded rates under Section 6(1) of the TANVAT Act by filing the monthly returns in Form L. Unfortunately, inspite of their objections dated 03.11.2014, the respondent has confirmed the proposal to deny the benefit of tax at compounded rates to the petitioner. He would further submit that the respondent though accepted the contention of the petitioner that all the purchases were effected locally, still proceeded to confirm his proposal on a new reasoning that the petitioner has not filed any documentary evidence for having exercised the option to pay tax at compounded rates and proceeded to levy tax on the purchase turnover without there being a proposal for the same in the show cause notice.

6. According to the learned counsel for the petitioner, the further case of the petitioner is that the respondent has rejected the purchase details furnished by the petitioner for the reason that the same is not signed by the authorized person. That apart, according to the learned counsel for the petitioner, when the respondent has accepted the contention of the petitioner, confirming the proposal on a new reasoning which was not there in the original notice is in violation of principles of natural justice and hence the impugned order has got to be set aside on this sole ground.

7. The learned Additional Government Pleader (Taxes) is unable to refute the said contention of the learned counsel for the petitioner.

8. I find much force in the contention of the learned counsel for the petitioner that when respondent has accepted the contention

of the petitioner that all the purchases were effected locally, still proceeded to levy tax on a new reasoning that the petitioner has not filed any documentary evidence for having exercised the option to pay tax at compounded rates, which was not there in the show cause notice, cannot be said to be correct in law and hence the impugned order has got to be interfered with.

9. In view of the same, the writ petition is allowed and the impugned order dated 10.03.2015 is set aside. However, it is open to the respondent to proceed afresh on the issue in accordance with law, after affording an opportunity to the petitioner, if so advised, No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle
Chennai-106.

1 cc to Spl.Government Pleader(T),Sr.No17312
1 cc to Mr.P.V.Sudakar ,Advocate, SR.No.17144

W.P.No.8703 of 2015

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