IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9522 of 2015
and M.P.No.1 of 2015

M/s Er. Deva Construction Contractors Pvt.Ltd.,
rep. by its Director K.Devendiran
No.101-B, Dr.Lakshmanasamy Salai,
K.K.Nagar, Chennai 600 078. [Petitioner]

Vs

1 The Commercial Tax Officer,
K.K.Nagar Assessment Circle,
No.15/88, Dr.Govindan Road
West Mambalam, Chennai 33.

2 The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai 600 083. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in TIN 33221425143/2012-13, quash the impugned proceedings dated 10.11.2014 as arbitrary, unreasonable and ultravires of the statutory provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.Kanmani Annamalai,
Additional Government Pleader (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 respondents and with their consent, these Writ Petition is taken up for hearing at the stage of admission itself.

2. The petitioner has come forward with this writ petition, challenging the order of the 1st respondent dated 10.11.2014.

3. According to the learned counsel for the petitioner, the petitioner filed periodical monthly returns for the assessment year 2012-2013 and the admitted tax was paid along with the returns. However, the 2nd respondent issued notice dated 08.05.2014 under Section 27 of the Act and also notice dated 20.06.2014, proposing to reverse the Input Tax Credit on purchases from registered dealers whose registration certificates were cancelled and also on purchasers made from the dealers remitting tax under compounded scheme. Further, they have also proposed to make an addition at 20% towards non filing of form WW.

4. According to the learned counsel for the petitioner, Section 63 A was inserted by Act 18 of 2012 mandating production of audited accounts. Sub Section 2 of Section 63 A empowers the officer to accept form WW filed belatedly on imposing discretionary penalty of maximum of a sum of Rs.10,000/- and there is no provision under Section 63 A to make addition for belated filing of form WW.

5. For the sake of convenience, Section 63-A of the Tamil Nadu Value Added Tax, 2006 is extracted below:-

> "Section 63-A. Accounts to be audited in certain cases:-
>
> (i) Every registered dealer whose total turnover including zero rate sale and sale in the course of inter-State trade or commerce as specified in section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the Assessing authority, within such period as may be prescribed.
>
> (2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the Assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of sum of rupees ten thousand, in addition to any tax payable, in respect of the said period:
>
> Provided that, this section shall not apply to the departments of Central and State Governments, local authorities, the railway administration as defined under the Railways Act, 1989 (Central Act 24 of 1989), the Tamil Nadu

State Road Transport Corporations and similar such registered dealers, as may be notified by the Government".

6. Further, according to the learned counsel for the petitioner, confirming the proposals, the impugned order dated 10.11.2014 has been passed and the same has been despatched on 05.12.2014. That apart, according to the learned counsel for the petitioner, prior to despatching of the impugned order by the department, the petitioner made a request on 26.11.2014, requesting the authorities to grant time to submit Form WW. However, without any reference to the representation, which was acknowledged, the impugned order has been despatched.

7. Besides, according to the learned counsel, the petitioner was not aware of the impugned order dated 10.11.2014, when he made a request on 26.11.2014 to the authorities. However, it is submitted that the petitioner has paid the penalty amount. However, he was not given an opportunity before the impugned order was passed.

8. According to the learned counsel for the petitioner, in terms of Section 27(3) of the Act, penalty can be imposed for wilful suppression and there is no finding to that effect as far as the petitioner is concerned.

9. The fact that no opportunity was given to the petitioner has not been disputed by the learned Additional Government Pleader (Taxes).

10. Since I find much force in the contention of the learned counsel for the petitioner, I am inclined to set aside the impugned order and remit the matter back to the authority concerned for passing orders afresh.

11. In view of the same, the writ petition is allowed. The impugned order dated 10.11.2014 is set aside and the matter is remitted back to the authority concerned to consider the case of the petitioner afresh and to pass appropriate orders on merits and in accordance with law.

12. It is made clear that the petitioner shall appear before the authority concerned on or before 29.05.2015 on any working day, after intimating the same to the authority concerned. On such appearance of the petitioner, the respondent concerned shall pass appropriate orders afresh on merits and in accordance with law, after proving an opportunity of hearing to the petitioner, within a period of fifteen days thereafter.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Commercial Tax Officer,
K.K.Nagar Assessment Circle,
No.15/88, Dr.Govindan Road
West Mambalam, Chennai 33.

2 The Commercial Tax Officer,
Saligramam Assessment Circle,
Chennai 600 083.

+ 1 cc to Mr.V. Sundareswaran, Advocate SR.18603

+ 1 cc Special Government Pleader Sr.18645

GR(CO)
EU 16.04.2015

W.P.No.9522 of 2015