BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition (MD)No.13581 of 2015 and
MP(MD)No.1 of 2015

M/s.NHA Associates,
rep.by its Partner M.Saravanan
664/8A1, Trivandrum Road,
Palayamkottai. ... Petitioner

Vs.

The Commercial Tax Officer,
Palayamkottai Assessment Circle,
Tirunelveli. ... Respondent

Writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN 33495565682 / 2013-14 dated 8.6.2015 and to quash the same as illegal arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording opportunity of being heard to the petitioner by considering the reply dated 15.6.2015 filed by the petitioner in light of the circular issued by the Commissioner of Commercial Taxes, Chennai in Circular No.54/2014 Ref.No.D3/34875/2014 dated 14.11.2014 within such time, as may be directed by this Court.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.R.Karthikeyan
Addl.Govt.Pleader

ORDER

This Writ petition has been filed praying to call for the records on the file of the respondent in TIN 33495565682 / 2013-14 dated 08.06.2015 and to quash the same as illegal and direct the respondent to pass assessment order afresh after affording opportunity of being heard to the petitioner by considering the reply dated 15.6.2015 filed by the petitioner in light of the circular issued by the Commissioner of Commercial Taxes, Chennai in Circular No.54/2014 Ref.No.D3/34875/2014 dated 14.11.2014.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents. By consent, the writ petition itself is taken up for final disposal at the stage of admission.

3. The case of the petitioner is that the petitioner is a works contractor. For the year 2013-2014, the petitioner was deemed to have been assessed by accepting the returns filed on a total and taxable turnover of Rs.14,48,50,499/- and Rs.5,66,98,622/- under the TNVAT Act. Subsequently, based on the scrutiny of the Form-WW, the respondent had issued a notice dated 11.05.2015, wherein the respondent proposed to disallow the exemption granted on the turnover of Rs.1,86,29,530/- stating that the dealer has reported the total contract receipt of Rs.19,72,13,795/- and they have purchased certain goods from unregistered dealer and utilised the same in contract work, for which the dealer has to pay tax at appropriate rates under section 12 of the TNVAT Act. The petitioner has been issued revision notice dated 11.05.2015 granting 15 days time for filing objection. The petitioner has received the said notice on 12.05.2015 and filed the reply on 15.06.2015 stating that since the petitioner was having huge input tax credit carried over, the petitioner need not pay the tax.

4. The learned counsel appearing for the petitioner submitted that the petitioner has received the revision notice on 12.05.2015 granting 15 days time to the petitioner to send his reply. But the petitioner was able to send reply only on 15.06.2015 i.e., after expiry of 15 days time granted by the respondent. But the impugned order dated 08.06.2015 has been despatched by the respondent only on 16.06.2015, which would show that the respondent after receipt of the reply dated 15.06.2015 from the petitioner, passed the order with an anti-date and sent the same on 16.06.2015. Hence, the impugned order passed by the respondent is liable to be quashed.

5. The learned Additional Government Pleader submitted that it is incorrect to state that the impugned order was prepared with anti-date. In fact, the revision notice was issued to the petitioner on 11.05.2015 granting 15 days time to file objection. But the petitioner has not chosen to file objections within the time stipulated by the respondent and filed the same only after a lapse of 19 days. Since the petitioner has not filed objection within 15 days, the impugned order was passed on 08.06.2015 and the same was forwarded on 16.06.2015. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

6. However, irrespective of the case projected on either side, I am of the considered opinion that since the impugned order was passed without considering the objection of the petitioner, in the interest of justice, by setting aside the order passed by the respondent, the matter could be remitted back to the respondent to dispose of the matter afresh by considering the objections of the petitioner.

7. Accordingly, this writ petition is allowed and the impugned order dated 08.06.2015 passed by the respondent is set aside. The petitioner is directed to deposit 15% of amount in the disputed tax amount of Rs.9,07,546/- within a period of two weeks from the date of receipt of copy of this order. On such deposit, the respondent is directed to consider the petitioner's objection and pass fresh orders within a period of four weeks by affording an opportunity of personal hearing to the petitioner thereafter. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Palayamkottai Assessment Circle,
Tirunelveli.

+One cc to M/s.S.Karunakar, Advocate, SR.No.44847
+One cc to The Special Government Pleader, SR.No.45599

mj
RL/4 c- 21/8/2015

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