IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 10.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14152 of 2016 and

WMP No.12385 of 2016

Tech Mahindra Ltd
Rep by its authorised person Mr Viswanath
Kini Head Global Tax of Tech Mahindra Ltd
602/3 ELCOT SEZ 138 Sholinganallur village
Kancheepuram District,
Chennai 119. ... petitioner

versus

1 The Assistant Commissioner (CT
Valluvarkottam Assessment circle No.10
Palaniappa Maaligai Greams Road
Chennai 600 006

2 Commissioner of Commercial
Taxes Chepauk Chennai 600 005

3 Government of Tamil Nadu
Rep by its secretary Commercial Tax
Department Fort St. Geroge
Chennai 600 009 ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the Order passed by the 1st Respondent in Impugned Order CST/867302/2014-15 DATED 10th March 2016 quash the same and direct the 1st Respondent to pass a fresh order after giving us an opportunity to submit relevant documents.

For petitioner ... Ms.R.Charulatha

For respondents ... Mr.Manokaran Sundaram, A.G.P.

O R D E R

Heard Ms.R.Charulatha, learned counsel for the petitioner and Thiru.Manokaran Sundaram, learned Additional Government Pleader for the respondents.

2. The petitioner is a public limited company engaged in

providing software developer services mainly to overseas telecom operators and is registered under the provisions of the Tamil Nadu Value Added Tax, 2006 and the Central Sales Tax Act, 1956.

3. The first respondent who is the Assessing Officer issued a notice titled as "Final notice" dated 24.7.2015 to the petitioner, wherein it was stated that on verification of the returns filed in Form I under the CST Act, for the period from April 2014 to March 2015, it revealed that the petitioners have claimed exemption on a turn over as per the returns filed, for which they have not filed supporting documents or other relevant records and that they have claimed concessional rate of tax and turnover as per returns filed, for which also they have not filed supporting documents like declaration form C or Form F or Form E1/Form E2. Further, by referring to Rule 12(7) of the CST (Registration and Turnover) Rules 1957, it was brought to the notice of the petitioner that declaration Form C or Form F or Form E-1/E-2 shall be furnished to the prescribed authority within three months after the end of the period to which the declaration relates and the petitioner should have filed declarations before 30.6.2015. Therefore, the first respondent has stated that in spite of lapse of 110 days, supporting documents have not been filed and therefore, he proposes to finally assess the transactions @ 14.5%. Further, there was also a proposal to reverse the input tax credit and levy penalty. The petitioner was granted ten day's time to file their objections along with the connected documents/ certificates/declarations etc.

4. The petitioner's case is that they appeared in person before the first respondent through their Tax Consultant on 9.10.2015 and explained to him the nature of business and are stated to have informed the first respondent that the entire amount reported under Section 5(1) of the CST Act in returns was in relation to the revenue received by way of convertible foreign exchange for export of services. It is further stated that the first respondent directed the petitioner to produce documentary evidence in support of its stand. It is further stated that their consultant appeared before the first respondent on 2.11.2015, 10.2.2016, 25.2.2016 and produced the relevant documents. It is the further case of the petitioner that on a perusal of those documents, the first respondent called for further documents to be furnished, which the Tax Consultant undertook to do so and requested personal hearing to be fixed. The Tax Consultant is stated to have appeared on 29.3.2016 before the first respondent, and he was informed that already order has been passed on 10.3.2016. This order is questioned in this Writ Petition contending that the order is in violation of the principles of natural justice and it is arbitrary. Apart from challenging the impugned order on these grounds, the order is also sought to be challenged on the merits of the assessment.

5. The Writ Petition was listed for admission on 18.4.2016,

on which date, the learned Additional Government Pleader accepted notice on behalf of the respondents and sought for a short time to get instructions. The matter was posted on 20.4.2016. When the case was heard on 20.4.2016, Additional Government Pleader sought for further time, on the ground that in spite of intimation to the first respondent, the said official has not turned up for giving instructions to the learned Additional Government Pleader. Since adjournment was sought for the second time, this Court granted an order of interim stay and posted the matter after six weeks for filing counter affidavit.

6. Even today, there is no counter affidavit filed by the first respondent. The learned Additional Government Pleader submits that in spite of repeated intimation having been given to the Assessing Officer, viz., the first respondent, he has failed to report before the Government Pleader's Officer and give instructions to the learned Additional Government Pleader. Therefore, a Demi Official letter dated 26.4.2016 has been sent to the Principal Secretary/ Commissioner of Commercial Taxes, Chennai, bringing to his notice the conduct of the Assessing Officer concerned.

7. On a perusal of the impugned order, it is seen that the first respondent has accepted the receipt of documents on 18.9.2015 but has stated that the petitioner did not file objections nor filed declaration forms or other documents. The first respondent has not granted an opportunity of personal hearing, nor has he discussed about the documents which were received by him from the petitioner on 8.9.2015. Thus, the impugned order is a clear case of arbitrary exercise of power and in total violation of principles of natural justice. The amount of tax demanded is Rs.1,96,22,30,682/- and in my opinion, the Assessing Officer viz., Thiru.N.Vadivel has not only abdicated his duties as an Assessing Officer but has acted in an irresponsible manner. Furthermore, the said Assessing Officer has failed to respond to the repeated intimations given by the learned Additional Government Pleader, which has resulted in this Court granting an interim order in this Writ Petition, though initially the Court was not inclined to grant interim order and granted time to the learned Additional Government Pleader for getting instructions. In the light of the fact that the impugned order is a non speaking order and in violation of principles of natural justice, it deserves to be set aside.

8. Accordingly, the Writ Petition is allowed. No costs. Consequently, W.M.P.No.12385 of 2016 is closed.

9. The impugned order is quashed and instead of remanding the matter to the first respondent, the first respondent is directed to place the entire assessment files to the second respondent, who shall nominate a competent officer having jurisdiction over the matter to proceed with the assessment. The said officer so nominated shall issue notice to the petitioner

within a period of two weeks, fixing the date of personal hearing, peruse the documents that have been produced, and if any clarification is required, the same shall be clarified from the petitioner and thereafter, a speaking order shall be passed on merits and in accordance with law. So far as the conduct of the Assessing Officer is concerned, viz., Thiru.N.Vadivel, taking note of the demi official letter addressed by the learned Additional Government Pleader, Taxes, dated 26.4.2016, there shall be a direction to the second respondent to initiate disciplinary action against the said officer and proceed in accordance with law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
Valluvarkottam Assessment Circle No.10
Palaniappa Maaligai Greams Road
Chennai 600 006

2 Commissioner of Commercial Taxes, Chepauk, Chennai 600 005.

3 The Secretary, Commercial Tax Department
Fort St. Geroge, Chennai 600 009.

1 cc to The Special Government Pleader (Taxes), sr.31500
1 cc to Mr.Lakshmikumaran, Advocate, sr.31779

W.P.No.14152 OF 2016

pa co
kra 12.07.2016