IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25260 of 2016
and
WMP.No.21622 of 2016

Gulf Engineers and Construction (P) Ltd.,
Represented by its Director,
R.Suresh Kumar,
128, Jai Hind Nagar,
Ernavoor, Chennai - 600 057. .. Petitioner

Vs.

The Assessment Commissioner (CT),
Thiruvottiyur Assessment Circle,
No.791, 1st Floor,
Thiruvottiyur High Road,
Thiruvottiyur, Chennai - 600 019. .. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the respondent herein in TIN:33031100831/2013-14, dated 20.06.2016, quashing the same, while directing the respondent herein to consider and pass orders on their application dated 08.07.2016 after providing an opportunity of being heard.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader accepting notice on behalf of the respondent. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, has filed this writ petition challenging the assessment order dated 20.06.2016 for the year 2013-2014.

3.The learned counsel for the petitioner strenuously contended that the impugned order is erroneous and liable to be set aside on various grounds. The attention of this Court was drawn to the pre-revision notice dated 07.07.2015 which is a notice issued under the CST Act and pointing out that the respondent stated that the total purchases as per Trading and Profit and Loss Account is Rs.9,89,29,406/-, less purchases as per Form WW, Rs.7,12,37,793/- and the interstate purchase is Rs.2,37,08,224/- and arrived at the balance at Rs.9,49,46,017/- and proceeded to levy tax at 14.5%. Similarly, such discrepancies were pointed out and the learned counsel referred to the reply given by the petitioner on 27.07.2015 wherein the petitioner has explained the various issues pointed out in the show cause notice viz., No tax paid under TNVAT & CST Act; Discrepancy in turnover; Incorrect rate of tax; Export record not filled; Incorrect closing stocks; Reversal of ITC; and Difference in ITC value. After referring to the reply, the learned counsel pointed out that in the impugned assessment order, the conclusion arrived at by the respondent that the explanation given by the petitioner is incorrect, is an erroneous finding. That apart, the purchase turnover could not have been assessed at 14.5% under Section 12 of the Act. Further, with regard to contention that the petitioner has adopted incorrect tax, it is submitted that at no point of time, documentary evidence was called for and the respondent erroneously confirmed the proposal. That apart, it is pointed out that there is no escaped assessment for levy of penalty and the finding with regard to under the said heading is also erroneous. In my view, all the issues pointed out by the petitioner are factual issues which have to be agitated before the Appellate Authority. If the petitioner has grievance with the manner in which the records were appreciated or the manner in which the turnover was determined, then, the statute provides an effective alternative remedy of filing an appeal.

4.The Hon'ble Supreme Court and this Court have repeatedly held that when complicated and disputed questions are involved, the aggrieved person should avail the alternative remedy available under the Statute more particularly in Taxation Statutes. Therefore, all issues raised by the petitioner should be agitated before the Appellate Authority. However, it is seen that the petitioner has filed a petition under Section 84 of the Tamil Nadu Value Added Tax Act for rectification of the defects in the impugned assessment order. According to the petitioner, the defects are apparent on the face of the record and they have submitted a petition on 08.07.2016 which is stated to be pending before the respondent and has not been disposed of till date.

5.In the light of the above, this Court is not inclined to interfere with the impugned order on the ground that the petitioner has got hierarchy of remedies under the Act and therefore, the Writ Petition is disposed of, with a direction to the respondent to consider the petition filed by the petitioner under Section 84 of the TNVAT Act dated 08.07.2016 and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing. However, in the event, the petitioner is desirous of preferring an appeal instead of prosecuting the petition before the respondent under Section 84 of the TNVAT Act. It is well open to the petitioner to file an appeal and if the appeal is filed within a period of 30 days from the date of receipt of a copy of this order, the Appellate Authority shall not reject the appeal on the ground of limitation.

6.With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Assessment Commissioner (CT),
Thiruvottiyur Assessment Circle,
No.791, 1st Floor,
Thiruvottiyur High Road,
Thiruvottiyur, Chennai - 600 019.

+1 cc to M/s.N.Inbaraj, advocate,sr.41148

+1cc to Spl.Govt.Pleader,sr.41510.

skv(co)
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