

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.26192 of 2016

and W.M.P.No.22460 of 2016

M/s. Gopal Engineering Works,
Rep. By its Managing Partner,
No.37/2 R.C.Little Wings,
Plot D, Ground Floor,
Madhavaram, Chennai - 600 051 Petitioner

Versus

The Commercial Tax Officer,
Manali Assessment Circle,
Kodungaiyur, Chennai - 600 118 .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN:33381084488/2013-14, quash the notice, dated 26.04.2016 issued therein and further direct the respondent to refund the excess tax amount of Rs.39,33,672/- in terms of the assessment order in TIN: 33381084488/2013-14 dated 04.06.2015.

For Petitioner : Mr. P.V.Sudakar
For Respondent : Mr. Manokaran Sundaram,
A.G.P.,

सत्यमेव जयते

O R D E R

Heard Mr. P.V.Sudakar, learned counsel for the petitioner, and Mr. Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) has challenged the notice issued by the respondent dated 26.04.2016, which are based on certain queries raised by the Deputy Commissioner (CT), Zone No.III, Chennai - 600 006.

3. The undisputed facts are that, for the assessment year 2013-14, the respondent completed the assessment, by order dated 04.06.2015, and the excess of tax collected from the petitioner has been estimated at Rs.39,33,672/-, for which, the respondent issued 'Form-P', which is the notice of the refund order, stating that a sum of Rs.39,33,672/- is refundable to the petitioner. Though the said order came to be passed, no further action was taken. Therefore, the petitioner approached this Court and filed a writ petition in W.P.No.6738 of 2016 to direct the respondents to refund the excess amount of tax, as per the refund order. The said writ petition was disposed of, by directing the respondent to consider the representation, dated 24.12.2015. However, that order has not been complied with by the first respondent therein, but he chose to issue a notice, dated 26.04.2016, based on certain queries raised by the Deputy Commissioner (CT). This notice is impugned in this writ petition. It is not known under which provision of law, the Deputy Commissioner (CT) has issued the proceedings, dated 11.04.2016, to the respondent, calling upon the respondent to issue the impugned notice.

4. In the absence of any statutory powers, the proceedings of the Deputy Commissioner (CT), dated 11.04.2016 has to be held to be without jurisdiction. Nevertheless, the petitioner sent a detailed objection, on 04.05.2016, pointing out, as to how they are entitled for refund, based on facts and records. In spite of having received such a reply, instead of granting refund, the respondent has addressed, a letter to the Additional Commissioner, Public Relations, on 15.07.2016, as to what has to be done in the matter. There is no statutory sanction to such procedure being adopted by the respondent.

5. However, the learned Additional Government Pleader, appearing on behalf of the respondent, on instructions, submitted that, such a procedure is being followed by the authorities while effecting refund.

6. Even assuming that there is some manual of procedures formulated by the Commercial Taxes Department, which obviously has no statutory force, it has to be seen as to what would be the effect of the order, if to be passed by the Commissioner of Commercial Taxes, based on the request made by the petitioner, on 15.07.2016.

7. Assuming that the Commissioner comes to a conclusion that the explanation offered by the petitioner to the queries raised by the Deputy Commissioner (CT), in his letter, dated 11.04.2016, is incorrect and unacceptable and he passed the order that would amount to reviewing the order of assessment dated 04.06.2015, undoubtedly the Act does not contemplate such

a procedure, though the power of suo motu revision has been conferred on the Joint Commissioner of Commercial Taxes. The procedure adopted by the respondent as well as the Deputy Commissioner of Commercial Taxes is wholly illegal.

8. Hence, the writ petition is allowed and the impugned notice is set-aside and the respondent is directed to effect refund of the tax, as per the refund order, in 'Form-P', dated 04.06.2015, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Manali Assessment Circle,
Kodungaiyur, Chennai - 600 118

+1 cc to special Government Pleader taxes sr.43238

+1 cc to Mr.P.V.Sudakar Advocate sr.43125

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