IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27363 of 2016
and
W.M.P.No.23566 of 2016

Ulundurpet Expressways (P) Ltd.,
(Formerly known as GMR Ulundurpet Expressways (P) Ltd.)
Represented by its Manager - Mr.Annamalai Muthu
150/400, NH45, Toll Plaza, Vikravandi
Villupuram - 605 652, Tamil Nadu. .. Petitioner

..Vs..

The Assistant Commissioner
Commercial Tax Department
Villupuram Assessment Circle - I
Villupuram. .. Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in the impugned order in TIN 33154682587/2010-11 dated 27.05.2016 on the file of the respondent, quash the same and remand the matter for de novo adjudication by the respondent.

For Petitioner : Mr.Mohammed Shaffiq

For Respondent : Mr.S.Kanmani Annamalai, A.G.P.,

ORDER

Heard Mr.Mohammed Shaffiq, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and perused the materials placed on record as well as the written instructions received from the respondent by the learned Special Government Pleader, dated 12.08.2016.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] on the file of the respondent. In this writ petition, the petitioner has challenged the order of revision of assessment under Section 27(1)(a) of the TNVAT Act for the year 2010-11. In fact, the order is the result of the VAT audit conducted by the enforcement wing officers in the place of business of the petitioner on 05.11.2013.

3.Two issues arise in the instant case. One pertaining to the sale of motor vehicle, wherein the respondent has confirmed the proposal in the show cause notice on the ground that the petitioner has not filed any proof of payment of tax, nor the details of Annexure to Form 1 return in which such sale is declared. Further, the petitioners have not proved that the vehicle suffered tax already in the State under the TNVAT Act or produced the details of registration with the Regional Transport Officer in Tamil Nadu under the TNVAT Act.

4.The second issue is with regard to the deduction of TDS and in the show cause notice, the respondent proposed to recover the same under the provisions of Section 13 of the TNVAT Act with interest, as the petitioner has not proved with connected records such as credit/debit note, bank statement etc., that TDS was refunded to the customer. The petitioner's contention is that TDS had already been deducted from the payment of the contractors namely, M/s.NHAI and the sub contractor of the petitioner has also availed refund through their jurisdictional Assessing Officer.

5.However, the respondent confirmed the proposal in the show cause notice by stating that "the audit report specifically shows as works contract tax receivable when transfer of property as goods in the same Form or some other Form in the execution of works contract under section 5(1) of the Act is in existence alone will result in receipt of works contract tax. Further, the dealers have not furnished any details of TDS deduction and payment of such tax to the credit of the department in Government account".

6.The learned counsel for the petitioner would submit that all the relevant records are available and invited the attention of this Court to the acknowledgment given by the office of the respondent on 15.09.2010, wherein VAT returns of GMR Highway Limited and GMR Ulundurpet Expressway Pvt. Ltd., were submitted to the office of the respondent.

7.Considering the facts and circumstances of the case, if the petitioner is able to establish the facts by producing the documents, then one more opportunity could be granted to the petitioner, since the computation of tax payable should be properly done. However, for this reason this Court does not propose to set aside the assessment order, but would give liberty to the petitioner to file a petition under Section 84 of the Act, along with the supportive documents and it should be done within a period of two weeks from the date of receipt of a copy of this order.

8.On receipt of such a petition, the respondent shall go through the same, examine the contents thereof for its correctness and proceed to pass a reasoned order on merits and in accordance with law, within a period of ten days from the date on which the petition is filed. Till such orders are passed, no coercive action shall be initiated against the petitioner to recover the tax and penalty as quantified in the impugned assessment order.

9.The writ petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner
Commercial Tax Department
Villupuram Assessment Circle - I
Villupuram.

+1 cc to Spl.Govt.Pleader,sr.47588.

msm(co)
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