IN THE HIGH COURT OF JUDICATURE AT MADRAS

11.11.2016

CORAM:

THE HON'BLE MR.JUSTICE NOOTY RAMAMOHANA RAO
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A.No.1182 of 2016
&
C.M.P.No.15174 of 2016

M/s.Era Infra Engineering Ltd.,
represented by its Authorised
Signatory Mr.Vinod Bhatia,
No.161, Thanthai Periyar Nagar,
Gandhi Nagar, Vadakuthu Post,
Panruti Tk, Cuddalore 607 303.
... Appellant/Petitioner

Versus

The Commercial Tax Officer,
Panruti Rural,
Panruti 607 106. ... Respondent/Respondent

Prayer: Writ Appeal filed Clause 15 of the Letters Patent Act against the order dated 16.6.2016 made by the learned Single Judge in W.P.No.25124 of 2015

WP.No.25124 of 2015:filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent in TIN 33264500797/2009-10 quash the impugned proceedings dated 13/03/2015 of the above WA.No.1182/16.

For Appellant : Mr.V.Sundareswaran

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader

J U D G M E N T

(Judgment of the Court was delivered by NOOTY RAMAMOHANA RAO, J.)

This in-house Appeal under Clause 15 of the Letters Patent is directed against the order and judgment rendered by the learned Single Judge on 16.6.2016 in W.P.No.25124 of 2015.

2. The assessee, who is a dealer on the rolls of the Commercial Tax Officer, Panruti Rural, Cuddalore District is the appellant before us. He instituted the Writ Petition calling in question the validity of the order of assessment made on 13.3.2015 by the assessing officer. He also made a serious issue with regard to the sustainability of the order of attachment to his Bank Account passed on 3.6.2015 by the assessing officer on the ground that the tax due, as determined in the assessment order dated 13.3.2015 remain unpaid and uncleared.

3. Heard Sri.V.Sundareswaran, learned counsel appearing for the appellant and Sri.S. Kanmani Annamalai, learned Addl. Government Pleader for the Commercial Tax Department.

4. The main plank of the submissions of Sri.Sundareswaran is that the assessee is a registered dealer on the rolls of the assessing officer alone, but not registered on the rolls of any other Assessing Officer and while granting him the registration certificate on 22.1.2007, the Registering Officer has clearly recorded the address of the assessee at Panruti Town. It has also recorded three different places other than Panruti where business is carried on as branch offices. It is the specific case of the assessee/appellant before us that prior to the passing of assessment order on 13.3.2015, no notice or opportunity whatsoever has been accorded by the assessing officer. In fact, the show cause notice dated 27.1.2015 is said to have been despatched to one of the site officers at the power plant, where expansion works were going on in Neyveli Lignite Corporation Limited, Tamilnadu. The assessee is not aware as to who has received at the site office the said notice, in as much as the works have been completed there.

5. The learned Single Judge, did not accept the contention of the Writ Petitioner/assessee, who proceeded on the basis that the assessment order has been delivered to the writ petitioner.

6. We find from a representation submitted by the appellant to the assesing officer on 29.7.2015 which is, in fact, despatched by Registered Post with Aknowledgment Due on 4.8.2015, where the assessee has specifically, in paragraph 7, has asserted that it was not in the know of the order of assessment passed on 13.3.2015, in as much as the assessee did appear before the same assessing officer during the months of May and June 2015, but they were never informed of passing of the assessment order on 13.3.2015. We also find that there is a specific assertion made that for the previous assessment years, the declared sale value has been accepted by the

assessing officer without any remark and only for the assessment year 2009-10, with which we are concerned, in the instant case, a dispute is sought to be raised, that too on the basis that there is a difference between purchase and sale values.

7. While we are not interested in going into the merits of the claim made by the appellant, but however, we are only concerned with the factum as to whether the notice dated 27.1.2015 has been delivered to the assessee, at the address recorded in the certificate of registration or not.

8. Sri.S.Kanmani Annamalai, learned Addl. Government Pleader though, has been granted time, and though he could produce postal acknowledgment cards , but however, he is not in a position to specifically assert that the notice dated 27.1.2015 has been delivered at the registered office of the dealer as was reflected in the certificate of registration to it. If no show cause notice is delivered, the failure of the assessee to participate in the assessment proceedings cannot be construed as a case of deliberate avoidance of participation in the assessment proceedings. This apart, we have noticed that the assessee is undertaking execution of certain civil works and that too, to public sector organisations such as Bharat Heavy Electricals Limited, Trichy or Neyveli Lignite Corporation Limited or Thermal Power Stations for the State of Tamilnadu. Therefore there could not have been any valid reason to doubt the Tax Deduction at Source certificates issued by them and the certificates furnished by such assessee were very much relied upon and were taken into account in the past.

9.In this view of the matter, We find that there appears to be some tenability behind the assertion of the writ petitioner/appellant/dealer that he has not received the pre-assessment notice and for want of knowledge, he did not participate in the assessment proceedings and that he has also not received the assessment order for him to be described to be a defaulter. Further we find that from the copies of the Tax Deduction at Source certificates, nearly around Rs.60 lakhs of tax has already been deducted and transmitted and therefore there appears to be some basis behind the assertion of the assessee that he is not liable to pay taxes in addition and if only an opportunity of participation is accorded, he will be able to produce the original TDS certificates and establish that tax liability already stood discharged by him.

10. For the aforementioned reasons, we find that the ends of the justice would be better served, if we provide an opportunity to the appellant/assessee to participate in the assessment proceedings. Hence, we set aside the order of assessment dated 13.3.2015 passed by the respondent and remit the matter back for consideration afresh.

11. It goes without saying that now the writ petitioner/appellant/assessee shall appear before the assessing officer on 28.11.2016 before 3.30 p.m. and file all the original TDS certificates and other material which is available with him to enable the assessing officer to pass appropriate assessment proceedings. It is, thereafter, the responsibility of the petitioner to ascertain the dates on which the assessment proceedings would be undertaken by the assessing officer without insisting for communications to be dispatched to his address by registered post. On the basis of the material made available, we hope and trust that the assessment proceedings will be finalised before the end of December 2016. With this, the Writ Petition stands disposed of. Consequence of the aforesaid order, the order of attachment dated 03.06.2015 shall stand raised. Consequently the connected C.M.P.No.15174 of 2016 also stands disposed of.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msr

To

The Commercial Tax Officer

Panruti Rural Panruti-607 106

+1 cc to M/s.V.Sundareswaran Advocate sr 65373

+1 cc to the Special Government Pleader(Taxes)

High court Madras sr 65181

W.A.No.1182 of 2016
&
C.M.P.No.15174 of 2016

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