IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-08-2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition Nos.28409 to 28411 of 2016
and W.M.P.Nos.24535 to 24537 of 2016

M/s.Maha Foundation .. Petitioner in all WPs.
Rep. by its Partner Mr.T.Selvaraj
11A, Jawahar Road
Ramana Nagar
Perambur
Chennai-600 011.

Vs.

The Assistant Commissioner (Commercial Taxes)
Sembium Assessment Circle
Nos.15 & 16, Malligai Avenue Extension
100 Feet Road, Kolathur
Chennai-600 099. .. Respondent in all WPs.

Writ Petitions filed under Article 226 of the constitution of India to issue Writ of Certiorarified Mandamus, to call for the records of the respondent culminating under the orders, dated 17.06.2016 and the consequential demand for tax and penalty made in Rc.Nos.127/2016(2014-2015),127/2016(2013-2014), and 127/2016(2015-2016) and quash the same and consequently, to direct the respondent to pass fresh orders by affording a personal hearing to the petitioner as per the representation made by the petitioner, dated 06.06.2016.

For Petitioner in all WPs. :Mr.G.Thilakavathi

For Respondent in all WPs. :Mr.S.Kanmani Annamalai
Additional Government Pleader
(Taxes)

COMMON ORDER

By consent, these Writ Petitions are taken up and disposed of at the stage of admission itself.

2. These Writ Petitions have been filed to issue Writ of Certiorarified Mandamus, to call for the records of the respondent culminating under the orders, dated 17.06.2016 and the consequential demand for tax and penalty made in Rc.Nos.127/2016(2014-2015),127/2016(2013-2014), and 127/2016(2015-2016) and quash the same and consequently, to direct the respondent to pass fresh orders by affording a personal hearing to the petitioner as per the representation made by the petitioner, dated 06.06.2016.

3. The petitioner, who is an unregistered contractor, has been levied with payment of tax as well as penalty by taking into consideration the value of the land upon which the construction work was executed by him. According to the petitioner, from the total cost of construction, the value of the land, labour cost and material cost should be excluded or in the alternative from the total cost of construction 50% should have been excluded, whereas, 70% was taken into consideration for determining the tax liability of the petitioner, which is basically wrong. Hence, challenging

the impugned orders of the respondent, dated 17.06.2016, determining the tax liability of the petitioner for the Assessment Years 2013-2014, 2014-2015, and 2015-2016, at Rs.1,97,613/-, Rs.4,21,807/- and Rs.1,41,249/- and the consequential impugned orders for penalty vide Rc/127/2016 (2013-2014), (2014-2015), (2015-2016) for Rs.2,96,419/-, Rs.6,32,709/- and Rs.2,11,874/-, as arbitrary and violative of principles of natural justice, the present Writ Petitions have been filed.

4. Mrs.G.Thilakavathi, the learned counsel appearing for the petitioner, would submit that the tax liability has to be determined excluding the land value from the sale consideration. She would further add that the impugned orders have been passed, without even affording an opportunity of personal hearing to the petitioner, which is violative of the principles of natural justice. She would further add that though, remedy by way of appeal is available, in view of the violation of principles of natural justice, the petitioner has approached this Court by way of filing these Writ Petitions.

5. Mr.S.Kanmani Annamalai, the learned Additional Government Pleader (Taxes), who took notice for the respondent, would contend that since the petitioner is an unregistered contractor, he will not have any

recourse under the Tamil Nadu Value Added Tax Act. He would further add that since, appeal provision is available to the petitioner, he ought to have filed an appeal by paying 25% of the tax demand and only to circumvent that, the petitioner has come before this Court by way of filing these Writ Petitions.

6. After some arguments, the learned counsel for the petitioner would submit that out of the total demand of tax made in three cases for the assessment years 2013-2014, 2014-2015 and 2015-2016 viz., 1,97,613/-, Rs.4,21,807/- and Rs.1,41,249/- respectively, totalling to Rs.7,60,669/-, the petitioner has already paid Rs.1,00,000/-, Rs.3,00,000/- and Rs.79,926/-, totalling to Rs.4,79,926/-, which is more than 60% of the tax demand and hence, the petitioner would be satisfied, if fresh orders are passed, after affording an opportunity of personal hearing to him. To substantiate her contention, that an opportunity of personal hearing is mandatory, as otherwise, it will result in gross violation of principles of natural justice, the petitioner has relied upon the order passed by this Court in W.P.Nos.1649 to 1663 of 2013, dated 22.01.2013, wherein, this Court in paragraph Nos.2 and 3 has held as follows:-

> "2. The impugned orders are in respect of five assessment years, namely 2007-2008 to 2011-12. The only

point taken in these cases is gross violation of the principles of natural justice, inasmuch as no opportunity of personal hearing was granted to the petitioner inspite of a specific request having been made in respect of each assessment year. The impugned orders in all these cases, on the face of it, do not show any personal hearing having been granted to the petitioner and, therefore, the orders are liable to be interfered with.

3. In such view of the matter, the impugned orders are set aside and the matter is remitted back to the authority for conduct of fresh enquiry on merits and in accordance with law. The learned counsel for the petitioner pleads for spaced date of hearing in respect of each assessment year for the reason that the turnover is huge and voluminous documents will have to be gone into at the time of personal hearing. The said request appears to be justified, as the opportunity of personal hearing should be reasonable and also should be commensurate with the nature of the cases. The authority is directed to consider the said plea and grant the opportunity of personal hearing on different dates for each assessment year. The petitioner also undertakes to co-operate for the early disposal of the adjudication and the same is recorded. The writ petitions are allowed by way of remand. Consequently, M.P. Nos. 1 of 2013 are closed. No costs."

7. Taking into consideration that the petitioner has already paid more than 60% of the tax demand and also the fact that the petitioner was not

given an opportunity of personal hearing, which is mandatory, as otherwise, it will result in gross violation of principles of natural justice, I am of the considered opinion that the impugned orders are liable to be set aside.

8. Having regard to above and in the light of the order cited supra, these Writ Petitions are allowed and the orders impugned herein are set aside. The matters are remitted back to the respondent, however, with the following conditions:-

i. Since the petitioner is an unregistered contractor, first of all, he has to register with the Sales Tax Authority, after paying the necessary charges and shall submit the accounts for all the previous years.

ii. Since, the petitioner has already paid more than 50% of the tax demand, he is liable to pay 10% of the total penalty due for all the three years, viz., 2013-2014, 2014-2015, 2015-2016, and the same shall be paid by him within a period of 15 days from the date of receipt of a copy of this order.

iii. On such payment being made, the respondent shall give an opportunity of personal hearing to the petitioner, for which, the petitioner shall co-operate, and thereafter, the respondent shall pass orders afresh, on merits and in accordance with law, as expeditiously as possible

iv. It is made clear that if the 10% of the total penalty due is not deposited within the time stipulated hereinabove, the benefit given hereinabove will not accrue to the petitioner.

The connected Miscellaneous Petitions are closed. There shall be no order as to costs.

paa 16-08-2016

Index : Yes/No

Internet : Yes/No

To

The Assistant Commissioner (Commercial Taxes)
Sembium Assessment Circle
Nos.15 & 16, Malligai Avenue Extension
100 Feet Road, Kolathur
Chennai-600 099.

B.RAJENDRAN,J

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