IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5581 of 2017
and
W.M.P.Nos.5942 and 5943 of 2017

M/s. M.V.Power Consultants and Engineers
Pvt.Ltd.
Rep. by its Managing Director,
Mr.M.Murugan,
Old No.38, New No.14, 1st Floor,
M.V.Power Complex, Alandur Road,
Saidapet,
Chennai - 600 015. .. Petitioner

Vs.

1. The Commercial Tax Officer,
Saidapet Assessment Circle,
No.16/55, Govindan Road,
West Mambalam,
Chennai - 600 033.

2. The Joint Commissioner (CT),
(Central) Enforcement Wing,
Enforcement-II,
Greams Road, PAPJM Buildings,
Chennai - 600 006. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in TIN/ 33616221530/10-11 dated 29.01.2015 and the consequential proceedings in TIN/ 3361621530/2010-11, 2011-12, 2012-13 dated 10.02.2017 and quash the same and further direct the first respondent to pass orders in accordance with law after affording an opportunity of being heard.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.K.Venkatesh,
Government Advocate (Tax)

O R D E R

Mr.K.Venkatesh, learned Government Advocate takes notice for the respondents. By consent, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the demand notice dated 10.02.2017. The case of the petitioner in short is as follows:

The petitioner is a registered dealer under the provisions of Tamil Nadu Valued Added Tax Act 2006. The petitioner is engaged in the execution of works contract. There was a VAT audit by the Assistant Commissioner (CT) Central Enforcement Wing-II, Enforcement-II, Chennai-6, on 24.06.2013 wherein certain defects were pointed out. In pursuant to such VAT audit and upon receipt of the report, notice for assessment years 2010-2011 and 2011-2012 and 2012-2013 were issued by the 1st respondent. On receipt of the notice for re-assessment, the petitioner sent a detailed reply on 28.01.2015. The petitioner disputed the turn over for the assessment year 2010-2011, 2011-2012 and 2012-2013. The first respondent rejected the objections raised by the petitioner and passed an order on 29.01.2015 for all the assessment years thereby confirming the proposals. On receipt of the said order, the petitioner sent a detailed representation for rectification on 18.03.2015 for all the three years which was filed before the first respondent on 28.04.2015 duly acknowledged by him. The petitioner also filed additional representation on 06.04.2015. The first respondent issued a notice to the petitioner on 25.11.2015 calling for certain records. The petitioner sought 15 days time for production of the same by their letters dated 11.12.2015 and 04.01.2016. Thereafter, the entire records were filed on 27.01.2016. Till this date, the first respondent has not passed any order on the application seeking for rectification, instead the impugned demand notice was issued.

3. Learned counsel appearing for the petitioner submitted that when admittedly, the petitioner has made application seeking for rectification and also furnished the documents as sought for by the Department, without passing an order on the said application, the 1st respondent is not justified in issuing the demand notice. Therefore, he contended that the demand notice is an outcome of non-application of mind in view of the fact the very rectification application is pending before the 1st respondent.

4. Learned counsel appearing for the respondents submitted that the rectification application filed by the petitioner will be considered and appropriate orders, on merits and in accordance with law, will be passed within a short time.

5. Upon perusal of the above stated facts and circumstances, it is evident that the petitioner has filed an application seeking for rectification of the assessment order and such application is still pending before the 1st respondent. Needless to say, unless and until such application is decided on merits and in accordance with law, issuing the demand notice, in the mean time, may not be a proper course of action. Therefore, without expressing any view on the merits of the claim made by the petitioner in respect of the application filed by him seeking for rectification, I direct the 1st respondent to consider and pass orders on the rectification application on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order, after giving due opportunity of hearing to the petitioner. After an order is passed in the rectification application, it is open to the 1st respondent to issue fresh demand notice. Accordingly, the impugned demand notice is directed to be deferred till the order is passed by the 1st respondent on the rectification application.

6. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi/dsa
To

1. The Commercial Tax Officer,
Saidapet Assessment Circle,
No.16/55, Govindan Road,
West Mambalam,
Chennai - 600 033.

2. The Joint Commissioner (CT),
(Central) Enforcement Wing,
Enforcement-II,
Greams Road, PAPJM Buildings,
Chennai - 600 006.

+1 cc to Mr.V.Sundareswaran Advocate sr 14663
+1 cc to Special Government Pleader Taxes sr 14692

W.P.No.5581 of 2017

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