IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.17689 of 2017
and
W.M.P.Nos.19193 and 19194 of 2017

N.Panchatcharam ... Petitioner

vs

The Deputy Commercial Tax Officer,
Tambaram Assessment Circle,
No.19A, Sivashanmugam Salai,
West Tambaram, Chennai - 600 045. ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari or any other appropriate Writ direction or order to call for the records of the respondent in TIN:33680942994/2015-16 dated 08.02.2017, quash the same being ultravires of the statutory provision of the Tamil Nadu Value Added Tax Act, 2006 being unreasonable, arbitrary and void.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard. Mr.V.Sundareswaran learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a registered contractor with the Tambaram Special Grade Municipality carrying on certain works for the Municipality. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Act, 2006 (TNVAT Act). The petitioner is stated to have given his option under Section 6 of the TNVAT Act for payment of tax under the compounded system by his option letter dated 30.04.2015. After about one year, the petitioner received the statement in Form R along with Form T declaration from the Commissioner of the Tambaram Special Grade Municipality with regard to the tax which is deducted at source. The petitioner filed his annual return on 06.01.2017 in Form L by declaring the turnover and tax at 2%. The respondent issued a notice under Section 22(4) of the TNVAT Act on 11.01.2017 proposing to make best judgment assessment. It is seen that the petitioner did not submit his objections and accordingly an order of assessment was passed on 08.02.2017 levying tax at pro-rata basis under Section 5 of the TNVAT Act at 5% and 15% instead of 2% under the compounded levy scheme. Though the petitioner did not file objections to the pre-assessment notice dated 11.01.2017, from a reading of the impugned assessment order dated 08.02.2017, it is seen that the Assessing Officer was aware of the TDS Certificate given by the Tambaram Municipality as the respondent has noted the contract work done by the petitioner for a sum of Rs.95,72,780/- for the year 2015-2016 which figure has been culled out by the Assessing Officer from the TDS Certificate given by the Municipality.

3.That apart, though in the preamble portion of the assessment order, the respondent has stated that the petitioner has not filed his option to pay tax at compounded rate as required under Section 6(1) of the TNVAT Act, this Court finds that such option letter was given by the petitioner on 20.04.2015 and acknowledged by the Commercial Tax Officer, Tambaram Assessment Circle, A.Gurunathan on 30.04.2015. Thus the observations made by the Assessing Officer in this regard appears to be factually incorrect statement. Subsequently, the petitioner has submitted representation on 07.06.2017 pointing out that he is a Civil Works Contractor and the purchases are made only locally and he does not take any input credit on the purchases and in turn, the Municipality will deduct VAT at 2% on the total contract and they themselves will pay tax to the Department during the end of the year and issue TDS Certificate in Form T. Therefore, it was submitted that there was no evasion of tax on the part of the petitioner. The petitioner reiterated that he has sent a reply letter dated 27.04.2017 after receiving the notice but the same was not considered by the respondent while passing the assessment order dated 08.02.2017 which was received by registered post on 05.06.2017. Therefore, the petitioner requested for dropping the proposal levying tax and penalty. This representation has not been considered but a third notice has been issued by the respondent on 09.06.2017 blaming the petitioner for belated filing of the return. It may be true that the petitioner did not give their objections to the pre-assessment notice. But nevertheless they had file the returns along with the TDS Certificate which has been taken note by the Assessing Officer. In such circumstances, the Assessing Officer could have afforded an opportunity of personal hearing to the petitioner, more so, after the representation dated 07.06.2017 instead of repeatedly sending notice to the petitioner calling upon him to pay tax and penalty.

4.In the light of the above factual position, this Court is inclined to remand the matter of Assessing Officer for fresh consideration, especially in the light of the fact that there was a factual error committed by the Officer in the matter pertaining to exercise of option by the petitioner to pay tax under Section 6(1) of the TNVAT Act.

5.For the above reason, the writ petition is allowed, the impugned assessment order is set aside and the matter is remanded for fresh consideration. The petitioner shall appear in person before the respondent within a period of one week from the date of receipt of a copy of this order and submit all the records and after hearing the petitioner and verifying the documents, the respondent shall re-do the assessment in accordance with law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

rna

To

The Deputy Commercial Tax Officer,
Tambaram Assessment Circle,
No.19A, Sivashanmugam Salai,
West Tambaram, Chennai - 600 045.

+1 CC to Mr.V. Sundareswaran, Advocate sr 48933
+1 CC to Spl. Govt. Pleader sr 48683

W.P No.17689 of 2017

SP(31/07/2017)