IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 23786 of 2013

M/s GMR Projects Private Limited,
Represented by its Director,
Mr.I.V.Srinivasa Rao,
No.389/B, Nogha Towers,
Valudhareddy,
Trichy Main Road,
Villupuram. .. Petitioner

vs.

The Assistant Commissioner (CT),
Villupuram -1,
Assessment Circle,
Villupuram. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records comprised in TN No.3335468218б/2009-2010, dated 12.07.2013 on the file of the respondent, quash the same and consequently, direct the respondent to hear the petitioner and pass order in accordance with law.

For Petitioner : Mr.Mohammed Shaffiq

For Respondent : Mr.S.Kanmani Annamalai, AGP (Taxes)

ORDER

The petitioner has filed this writ petition to call for the records comprised in TN No.33354682186/2009-2010, dated 12.07.2013 on the file of the respondent, quash the same and consequently, direct the respondent to hear the petitioner and pass order in accordance with law.

2. The petitioner and M/s. GMR, Ulundurpet Expressway Private Limited, have obtained registration under the TN VAT Act as well as under the CST Act and M/s. GMR, Ulundurpet

Expressway Private Limited has obtained a contract of Build, Operate and Transfer (BOT) for improvement, including strengthening and widening of existing two lane roads to four lane dual carriage way from Villupuram to Ulundurpet. M/s. GMR, Ulundurpet Expressway Private Limited entered into a back-to-back contract with the petitioner, who in turn, entered into sub-contracts in respect of the entire work relating to the above project, with the sub-contractors, who are the registered dealers under the TN VAT Act. The work was commenced in the assessment year 2006-2007 and continued till 2011-2012 vide orders dated 24.08.2011 and 3.10.2011. The petitioner had been assessed for the above period and they claimed deduction of the sub contractor's turnover for the above said years as they have given the entire contract work to the various sub contractors, who are the registered dealers under the TN VAT Act. While so, the respondent issued a notice dated 26.04.2013 proposing to levy tax on a turnover of Rs.138,53,27,154/-, out of the total contract receipt for the financial years 2006-2007 to 2010-2011 of Rs.606,63,14,601/- the work assigned to the sub-contractors was only to the tune of Rs.4,68,98,87,447/- for which, the petitioner filed a reply dated 18.06.2007 along with the statement, claiming deduction of taxes as they have issued their work to the sub contractors. However, the respondent, without considering the reply submitted by the petitioner, has passed the impugned order. Aggrieved by the said order, the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that the impugned order passed by the respondent, under Section 27(3) of the TN VAT Act levying penalty, is clearly bad for want of jurisdiction and inasmuch as the bald allegation of wilful non disclosure of particulars, as the impugned order does not contain any finding of wilful non-disclosure.

4. In support of his submissions, the learned counsel for the petitioner relied on the order passed by this Court in W.P.No.1725 of 2015 dated 29.01.2015 and the relevant portion reads as follows:

> "7.In view of the decision of this Court reported in [2011] 40 VST 399 (Mad) (S.Kathiresan Vs. Deputy Commercial Tax Officer, (Registration Cell), Puducherry), which portion is extracted below:
>
>> " A perusal of the order passed further shows that quite apart from the reasons given as a basis for issuance of a show-cause notice, the order further refers to yet another reason that the petitioner had failed to file

> extract as regards the declaration form C as prescribed under sub-rule (10) of rule 14. A reading of the order thus reveals that more than one reason had resulted in persuading the officer to pass order of cancellation. Considering the fact that the status as a registered dealer confers certain rights and privilege on the dealer under the Act, in fairness to the rights of the petitioner, the respondent should have intimated about not only the rejection of the request seeking time but also the grounds on which the proposal is made, so that the petitioner has the opportunity to rebut the same.
>
> As rightly contended by the learned counsel for the petitioner, if the order proceeds on the reasons other than those stated in the notice, in fairness to the claim of the petitioner, the respondent should have indicated the same too in the notice. In the circumstances, I have no hesitation in accepting the plea of the petitioner that the order is passed without observing the principles of natural justice and the same has to be set aside.

I have no hesitation in setting aside the impugned order giving liberty to the petitioner to appear before the Authority concerned on 16.02.2015 and make submissions / objections along with documents, if any and it is open to the Authority concerned to consider the same and pass orders on merits without being influenced by the earlier order which has been set aside by this Court in this writ petition.

5. The learned counsel for the petitioner further submitted that the facts of the said decision (cited supra) is squarely applicable to the facts of the present case. Hence, he requested this Court that in the light of the decision (cited supra), the writ petition may be allowed.

6. The learned Additional Government Pleader appearing for the respondent has not disputed the order passed in W.P.No.1725 of 2015 dated 29.01.2015 (cited supra).

7. Considering the submissions made by the learned counsel for the petitioner as well as the learned learned Additional Government Pleader, this Court has no hesitation to set aside the impugned order passed by the respondent. Accordingly, the impugned order passed by the respondent is set aside and the writ petition is allowed. The petitioner is at liberty to approach the authority concerned and to file an application along with relevant documents within a period of four weeks from the date of receipt of a copy of this order. On such filing of the application, It is open to the respondent authority to consider the same and pass appropriate orders on merits and in accordance with law as expeditiously as possible without being influenced by the earlier order, which has been set aside by this Court in the writ petition. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Villupuram -1,
Assessment Circle,
Villupuram.

+1 CC to Govt. Pleader (Taxes) sr 11733

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