IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM
THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24545 of 2006
in
M.P.No.1 of 2006

M/s. Pallava Granite Industries
Rep.bBy its Managing partner
Mr.K.Subba Reddy
No.10, Sriram Nagar North Street,
Alwarpet,
Madras - 600 018. ..Petitioner

Vs.

The Commercial Tax Officer,
Mandaveli Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the respondent's notice bearing TNGST No.0760419/2002-03 dated 15.06.2006 and quash the same and direct the respondent to forbear from treating the wages paid to the labour for removing and dumping over burden consisting of earth and rubbles while quarrying marketable granite as a taxable event.

For Petitioner : Mr.K.Ramakrishna Reddy

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

This Writ Petition is filed challenging the proceedings dated 15.06.2006 with the consequential relief for a direction to the respondent not to treat the wages paid to the labour for removing and dumping over burden consisting of earth and rubbles while quarrying marketable granite as a taxable event.

2. Heard Mr.K.Ramakrishna Reddy, learned counsel appearing for the petitioner and Mrs.Dhana Madhri, learned Government Advocate appearing for the respondent. I have also perused the impugned proceedings.

3. First of all, it is to be stated that the proceedings impugned in this writ petition is not an order determining the rights of the parties finally. On the other hand, it is only a show cause notice calling upon the petitioner to file their objections against the proposed revision of assessment in respect of the assessment year 2002-2003. However, the learned counsel for the petitioner vehemently contended that even though the respondent called upon the petitioner to file their objections to the proposal, the findings rendered in the impugned proceedings as if the petitioner has sold the waste material and thus, not shown such sale proceeds in their turnover is incorrect finding and therefore, based on such incorrect finding, the respondent is not justified in calling upon the petitioner to file their objections. According to the learned counsel, in the absence of any sale of waste material as alleged in the impugned proceedings, the question of showing such quantum involved in the alleged sale in the turnover does not arise. Therefore, the petitioner will not be in a position to file any documents to prove the negative, namely, absence of sale of those waste materials.

4. On the other hand, the learned Government Advocate contended that the impugned proceedings is purely a show cause notice and therefore, the petitioner can very well file their objections by raising all the contentions as raised in this writ petition.

5. I have already pointed out that the impugned proceedings is nothing but a show cause notice. Therefore, it is for the petitioner to file a reply/objection by ventilating all their objections/grievance. It is true that in the impugned proceedings the respondent has made certain observations/findings as though the petitioner has indulged in selling some waste material and not shown the amount involved in such alleged sale in their turnover. Needless to say that it is only a prima face view or an allegation of the respondent and cannot be construed as the final finding or observation in respect of the issue involved in this matter. Any such observation or finding referred to in the show cause notice is undoubtedly a prima facie view of the Officer who issued the show cause notice and therefore, such view is always open for further discussion and change, based on the objections to be filed by the petitioner. Therefore, I do not find that the petitioner's apprehension, as if the respondent has foreclosed the issue even before considering the objections of the

petitioner, is well founded. Accordingly, it is for the petitioner to file their objections to the notice of proposal and raise all the objections before the respondent, as this Court is not expressing any view on the merits of the contentions raised by both the parties touching upon the issue raised in the show cause notice.

6. Accordingly, this Writ Petition is disposed of by directing the petitioner to file their reply to the impugned notice of proposal along with the supportive documents within a period of four weeks from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall consider the same and pass appropriate orders on merits and in accordance with laws within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsi

To

The Commercial Tax Officer,
Mandaveli Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.K.Ramakrishna Reddy, Advocate, S.R.No.72217
+1cc to the Government Pleader, S.R.No.72665

W.P.No.24545 of 2006

SJ(CO)

rrs 24/10/2018