IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.09.2018

CORAM
THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.29447 of 2008
and
MP No.1 of 2008

M/s.East Coast Constructions & Industries Ltd.,
Rep. by its Managing Director,
4, Moores Road,
Chennai 600 006. ...Petitioner

vs

1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St.George,
Chennai 600 009.

2.Assistant Commissioner (Commercial Taxes),
Nungambakkam Assessment Circle,
88, V R Ramanathan Road,
Chennai 600 031. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records and quash the order issued by the second respondent dated November 3, 2008 levying Sales Tax, SC and AST in file No. TNGST 0460557/2004-05, on the file of the Respondent.

For petitioner : Mr.Joseph Prabakar

For Respondents : Mr.M.Hariharan
Additional Government Pleader (T)

ORDER

The petitioner is aggrieved against the order dated 03.11.2008, revising the assessment in respect of assessment year 2004-05.

2. The petitioner is a Limited Company engaged in the business of Civil construction and a registered dealer under the second respondent. The assessment for the year 2004-05 under TNGST was completed and an order of assessment was passed by the second respondent on 15.11.2006, wherein the second respondent

had allowed exemption of Rs.1,80,16,025/-, representing value of building materials purchased in the course of interstate trade. However, on 11.06.2008, the second respondent issued a notice of proposal for revising the assessment by rejecting the claim of exemption for interstate purchase of building materials for the above said value of Rs.1,80,16,025/-. The petitioner made their objection on 24.06.2008. However, the second respondent passed the impugned order on 03.11.2008, disallowing the exemption already granted in the original order of assessment in respect of inter state purchase of building materials. Thus, the present writ petition is filed before this Court.

3. Mr.Joseph Prabakar, learned counsel for the petitioner submitted that the impugned order revising the assessment cannot be sustained on more than one reason. His first contention is that when there is no escapement of assessment, question of revision the assessment does not arise. His second contention is that the impugned order referred to various reasons for disallowing the exemption, which are not put to notice to the petitioner, when the notice of proposal dated 11.06.2008 was issued to the petitioner. Therefore, he contended that the impugned order was based on reasons extraneous to notice of proposal. On merits, the learned counsel contended that the petitioner is entitled to such exemption under Section 3B(2)(b) of the TNGST Act, 1959 and the Assessing Officer has dealt with in detail with regard to the eligibility of the petitioner to get such exemption, in his original order of assessment dated 15.11.2006. Therefore, he submitted that without there being any valid reason, such conclusion arrived by the Assessing Officer cannot be changed or altered by way of revision.

4.On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that when the petitioner was not entitled to exemption in respect of purchases of building materials effected through interstate sale, the Authority is entitled to revise the order of assessment granting such exemption. He further submitted that the present impugned order was passed only after issuing notice of proposal and considering the reply submitted by the petitioner to such notice. Therefore, he contended that the impugned order need not be interfered with.

5.Heard both sides and perused the materials placed before this Court.

6.The issue involved in this case is in respect of purchases of the building materials made by the petitioner effected through interstate sale. The petitioner claimed exemption under Section 3B(2)(b) on such interstate sale purchase and such claim was, in fact, accepted by the Assessing Officer, while passing the order of assessment on 15.11.2006.

There is a clear finding rendered by the Assessing Officer that the purchases of building materials effected in interstate sale was verified with purchase bills and allowed exemption under Section 3B(2)(b). It is also further referred in the original assessment order that the claim of exemption towards interstate purchases of building materials for Rs.1,80,16,025/- and Iron and Steel (Declared Goods) for Rs.14,19,34,312/- were verified with relevant documents and found admissible. Having found so, the Assessing Officer has chosen to revise the assessment by issuing the notice of proposal dated 11.06.2008.

7. A careful perusal of the said notice would indicate that the same does not reveal any material details or particulars as to how the Assessing Officer proposed to disallow the exemption already granted in respect of purchases made through interstate sale to the tune of Rs.1,80,16,025/-. Except stating that on examination of assessement on records, it is seen that turnover of Rs.1,80,16,025/-, being the interest purchase of building materials, were wrongly allowed exemption, the said notice does not disclose as to what materials found in the assessment records had driven the Assessing Officer to make such proposal for disallowing the exemption.

8. Needless to state that the assessee will be in a position to file an effective reply to the notice of proposal only when such notice contains the material details and particulars regarding the proposal. In the absence of such details and particulars, certainly the assessee will not be in a position to effectively make a reply and defend the case before the Assessing Officer. However, the assessee in this case has given their reply on 24.06.2008 and requested to drop the proceedings. They strongly relied on Section 3B (2)(b) of the Act in support of their claim for exemption. The Assessing Officer, apart from rejecting the claim made by the petitioner, has stated the following reasons for disallowing the exemption.

> "The objections raised have been carefully examined by me. The CST Act 1956 has been amended from 11.5.2002 enabling the states to levy tax on the transfer of property in goods involved in the execution of works contract in the course of interstate trade or commerce also. Therefore the decision relied on by the assessees (88 STC 204) is not applicable from the year 2002-03. The goods in question are general in nature and are readily available to any buyer and can be used by any dealer. It cannot be established that the goods are usable only to a particular contract and will not be fit for other works."

9. Perusal of the above said findings rendered by the Assessing Officer would show that such reasonings were not

referred in the form of proposal, when notice was issued on 11.06.2008. Needless to say that a reasoning in the order of assessment should emerge from the related grounds raised in the notice of proposal and not to be stated as the first time, while passing the order of assessment. In other words, the assessee cannot be put to surprise with certain reasons in the assessment order, when crux of such reasons, in the form of grounds, is not stated in the notice of proposal. At the same time, at this stage, this Court is not expressing any view on the correctness or otherwise of the reasons assigned by the Assessing Officer in the impugned order, as this Court is inclined to interfere with the same only on the reason that the same was passed strictly not by following the principles of natural justice. Therefore, this Court is of the view that the matter has to go back to the Assessing Officer once again for redoing the revision of assessment on merits and in accordance with law, after issuing a fresh notice of proposal with material details and particulars as to how the exemption already granted is sought to be disallowed.

10.Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment as stated supra. The Assessing Officer shall send a fresh notice of proposal, as stated supra within a period of three weeks from the date of receipt of a copy of this order. On receipt of such notice of proposal, the petitioner shall send their reply with material documents within a period of two weeks thereafter. On receipt of such reply, the Assessing Officer shall indicate the date of personal hearing to the petitioner. On completion of personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law within a period of four weeks thereafter. Any amount deposited or paid by the petitioner, in pursuant to the interim order passed by this Court, during the pendency of the writ petition, shall be kept in the account of the respondent and be taken into consideration at the time of passing the fresh order of assessment. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vri

To

1. The Secretary to Government,
   Department of Commercial Taxes and
   Religious Endowments,
   Fort St.George,
   Chennai 600 009.

2. Assistant Commissioner (Commercial Taxes),
   Nungambakkam Assessment Circle,
   88, V R Ramanathan Road,
   Chennai 600 031.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.67138
+1cc to the Government Pleader, S.R.No.67145

W.P.No.29447 of 2008

RR(CO)

rrs 26/10/2018