IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.1190 of 2013 and
M.P.No.1 of 2013

NEPC India Ltd.,
rep by its Director
Raj Kumar Kemka
No.36, Wallajah Road,
Chennai - 600 005. .. Petitioner

Vs.

The Commercial Tax Officer,
Chepauk Assessment Circle,
No.621, Anna Salai,
Chennai - 600 006. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue Writ of certiorarified mandamus calling for the records of the respondent in his TNGST No.0660831/2006-07 dated 03.03.2012 and to quash the same and direct the respondent to consider the claim of sub-contractor as provided under Section 3-B(2)(d) of the TNGST Act, 1959.

For Petitioner : Mr.K.Narayanan
for Mr.N.Inbarajan

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus calling for the records of the respondentdated 03.03.2012 and to quash the same and to direct the respondent to consider the claim of sub-contractor as provided under Section 3-B(2)(d) of the TNGST Act, 1959.

2.According to the petitioner, the impugned order passed by the respondent violates the provisions of Section 87-A of the TNVAT Act, which contemplates the completion of the assessment based on the returns filed. But the respondent has estimated the turnover without passing the assessment based on the returns filed by them and therefore, according to the petitioner, the order of the respondent is arbitrary. That apart, the petitioner also contended that there is violation of principles of natural justice inasmuch as the respondent has not granted opportunity to the petitioner while considering the claim of the execution of the work through the sub-contractor, which is eligible for deduction as provided under Section 3-B(2)(d) of the Act.

3.The learned counsel for the petitioner submitted that the issue involved in the present Writ Petition is covered by the decision of this Court reported in (2013) 58 VST 183 (Mad) [Thiruneelakandar Paint Company Vs. Assistant Commissioner (CT), Shevapet (North) Circle, Salem] wherein this Court held as follows:

> "...
> A reading of Section 87A of the Act and Rule 8(8)(a) makes it clear that, in respect of the assessment for the period from 1st April, 2006 to 31st December, 2006, the assessing officer has to pass orders, based on the returns filed by the petitioner within such time and such manner, as prescribed in the said Act, without calling for any particulars. In the present case on hand, the respondent, without following the provisions contemplated under Section 87A of the Act and Rule 8(8)(a), issued the revised notice, which is without basis and jurisdiction.
> Therefore, the revised notice, impugned herein, issued by the respondent is liable to be set aside. Accordingly, the revised notice dated June 8, 2012, is set aside and the writ petition is allowed, with a direction to the respondent to complete the assessment for the aforesaid period, i.e. from April 1, 2006 to December 31, 2006, as per the provisions contemplated under Section 87A of the Act and Rule 8(8)(a) and pass appropriate orders in accordance with law. No costs. Consequently, connected M.P. is closed."

4.The learned Government Advocate (Tax) submitted that the issue involved in the present Writ Petition is covered by the decision reported in (2013) 58 VST 183 (Mad) and that the same order can be passed in this Writ Petition also.

5.Having regard to the submissions made by the learned counsel on either side, following the earlier order passed by this Court reported in (2013) 58 VST 183 (Mad), the impugned order dated 03.03.2012 is set aside. The matter is remitted back to the respondent for fresh consideration. The respondent is directed to decide the matter afresh, after giving due opportunity of personal hearing to the petitioner.

6.With these observations, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Chepauk Assessment Circle,
No.621, Anna Salai, Chennai - 600 006.

+1 CC to Mr.M. Inbarajan, Advocate sr 18666

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KS(CO)
SP(21/03/2018)