IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No.29624 of 2007
and
M.P. Nos.2 & 3 of 2007

M/s.Kier International Ltd.,
109, Defence Colony,
Nandambakkam,
Chennai 600 097,
Rep. by its authorized representative
S.Palani. ... Petitioner

Vs

1.State of Tamilnadu,
Rep. by its Secretary to Government,
Commercial Taxes Department,
Fort St. George,
Chennai - 9.

2.The Special Committee,
Rep. by its Assistant Commissioner,
Commercial Taxes Department,
Ezhilagam, Chennai 600 005.

3.Principal Commissioner,
Commercial Taxes,
Chepauk, Chennai 5.

4.Deputy Commissioner,
Commercial Taxes,
Chennai South Division,
Chennai -6.

5.Commercial Tax Officer,
Guindy Assessment Circle,
Commercial Taxes Department,
46, Greenways Road, Chennai 28.

6.Deputy Commercial Tax Officer,
Guindy Assessment Circle,
Commercial Taxes Department,
46, Greenways Road,
Chennai – 28. ... Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for the records pertaining to the issue of assessment order dated 08.02.2001 duly issued in assessment order TNGST 0902606/99-2000 by the Deputy Commercial Tax Officer, Guindy Assessment Circle, Commercial Taxes Department, 46 Greenways Road, Chennai 28 the 6th respondent herein in claiming total tax at Rs.56,52,507/- and the consequent levy of penalty at 150% of the tax due at Rs.84,78,761/- under Section 12(3)(b)(v) of the TNGST Act and quash the same and direct the 6th respondent to consider the assessment afresh after perusing the objections, documents and records and also after giving personal hearing under Section 55 of the TNGST Act Madras - 59.

For Petitioner :: Mr.D.Ashok Kumar
For Respondents :: Ms.G.Dhanamadhri
Government Advocate [Taxes]

O R D E R

Heard Mr.D.Ashok Kumar, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate (Taxes) appearing on behalf of the respondents.

2.The Petitioner, who is the registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, [in short "the TNGST Act"] is before this Court, challenging the order of assessment dated 08.02.2001 for the assessment years 1999-2000.

3.On a reading of the impugned order, it is evidently clear that the Assessing Officer namely, the 6th respondent, did not independently apply his mind and did not take an independent decision. This is because the assessment order clearly shows that he was solely guided by the proposal received from the Deputy Commercial Tax Officer (Enforcement), Mayiladuthurai.

4.The Assessing Officer being an independent statutory authority should apply his mind and come to a conclusion and cannot be solely guided by the report of the Enforcement Officer. Because the assessment was not proceeded in an independent manner, the petitioner submitted a representation to the Principal Commissioner, Commercial Taxes, Chennai on 30.01.2001. The Principal Commissioner, Commercial Taxes examined the petition and taking into consideration the representation the petitioner was instructed to produce the records and evidences before the Assessing Officer to prove that they have rendered only service and that there was no supply of material in the execution of the said works contract. The Deputy Commissioner (Commercial Taxes), South Zone, Chennai- 600 006, was instructed to consider the documents produced before the

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Assessing Officer and to guide the Assessing Officer properly and complete the assessment proceedings. Unfortunately the communication sent by the Principal Commissioner and Commissioner of Commercial Taxes, is dated 08.02.2001 and the impugned assessment order is also dated 08.02.2001. Therefore, the petitioner filed a petition under Section 14 of the Act to revise the assessment, this was also rejected by the officer on 04.07.2001.

5.In my view, he should not have done so, especially, when the Commissioner directed him to go through all the records. However, the petitioner in spite of challenging the impugned order, approached the Special Committee for rectification under Section 16(D) of the Act, which unfortunately held that there was no violation of natural justice. Immediately, the petitioner approached this Court and filed a writ petition, but, subsequently on legal advice, withdrew the writ petition and challenged the assessment order, which, in the opinion of this Court, has been correctly done. The manner in which the assessment has been completed is wholly erroneous. It is held that the Assessing Officer did not give any consideration to the materials placed by the petitioner, which prompted the petitioner to submit representation before the Principal Commissioner and Commissioner of Commercial Taxes. Even for such communication, proper response was not given by the Assessing Officer.

6.Thus, this Court finds that gross injustice has been done to the petitioner and added to this, by effecting attachment of the petitioner's bank account, the entire amount including penalty has been recovered. The respondents have not given any finding as to how the penalty is leviable under Section 16(2) of the Act, as willful non-disclosure has not been established.

7.Thus, for the above reasons, the impugned order is bad in law. Hence the Writ Petition is allowed and the impugned order dated 08.02.2001 is set aside and the matter is remanded for fresh consideration after issuing notice to the petitioner and afford them adequate opportunity to submit objection and after hearing the authorised representative of the petitioner in person re-do the assessment in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

maya/sai

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To

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+1cc to Mr.D.Ashok Kumar, Advocate SR.No.1519
+1cc to Special Government Pleader(Taxes) SR.No.1519

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