IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.28656, 28660 and 28661 of 2018
and
WMP Nos.33457, 33461 and 33462 of 2018

M/s.Gharpure Engg. & Constructs (Pvt) Ltd.,
rep. by its Director,
No.34, Bilal Estate, Ukkadam South,
Coimbatore. ... Petitioner in all W.Ps.

vs.

1.The Assistant Commissioner (CT),
Big Bazaar Street Circle,
Coimbatore.

2.The Deputy Commissioner (CT),
Zone I,
Coimbatore. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records of the first respondent in his proceedings in TIN No.33811842743/2012-13, TIN No.33811842743/2013-14 and TIN No.33811842743/2014-15 quash the impugned notice dated 24.08.2018 issued therein.

For Petitioner in all W.Ps. : Mr.R.L.Ramani Senior Counselfor Mr.B.Raveendran

For Respondents in all W.Ps. : Mr.M.Hariharan Additional Government Pleader

C O M M O N O R D E R

These writ petitions are filed challenging the notice dated 28.04.2018, calling upon the petitioner to make objection if any against the proposal to assess the non declaration of the taxable turnover under Section 27(1)(a) of the TNVAT Act, 2006 and also to impose penalty under Section 27(3)(c) of the said Act for the assessment years 2012-13, 2013-2014 and 2014-15.

2. Following are the short facts, which compelled the petitioner to file these writ petitions:

In respect of the subject matter assessment years, a notice of proposal was issued on 14.07.2016. The petitioner made a reply on 21.07.2016 and again on 05.09.2016. Thereafter, the Assessing Officer passed orders of assessment on 09.09.2016 in respect of the assessment years 2013-14 and 2014-15. However, in respect of the assessment year 2012-13, there is a deemed assessment. As per the assessment order passed by the Assessing Authority on 09.09.2016, the petitioner is entitled to refund a sum of Rs.1,81,31,238/- for assessment year 2013-14 and Rs.1,31,88,267/- for the assessment year 2014-15. Therefore, the petitioner made the refund claim on 22.02.2017, followed by another reminder on 12.05.2017. The said request was not considered. Hence, the petitioner filed W.P.No.14712 of 2017 before this Court and sought for a direction to the concerned authority to refund the excess amount, as arrived in the assessment order dated 09.09.2016 for the assessment years 2013-14 and 2014-15. The said writ petition was disposed of on 04.10.2017 with a direction to the respondents therein to pass appropriate orders on the petitioner's application for refund within a period of eight weeks. Instead of passing an order for refund, the present impugned notice is issued once again, raising the very same contention as raised in the original notice of proposal dated 14.07.2016. Hence, these writ petitions are filed challenging the said notices.

3. Separate counter affidavits are filed in all the three writ petitions. The crux of the contention raised in the counter affidavits is as follows:

The issue raised in the impugned proceedings, though was raised already on 14.07.2016, in order to give a reasonable opportunity to the petitioner, the present impugned notice is issued again, since no order was passed based on the reply filed by the petitioner to the notice dated 14.07.2016. The petitioner has received payment from CMWSSB, Chennai during the year 2012-13 but has not reported the same in the monthly returns. Therefore, it is undisclosed turnover. Hence, it is proposed to revise the turnover based on the turnover not reported. The impugned notices are within the power, authority and jurisdiction of the respondent under the provisions of Section 27(1)(a) of TNVAT Act. No assessment order was passed for the year 2012-13. Therefore, the petitioner is not entitled to conclude that the proposal in the notice dated 14.07.2016 is dropped for the assessment year 2012-13. As there is no refund order issued for the petitioner for the assessment year 2012-13, the contention of the petitioner that the impugned notices have been issued only with a view to deny the refund of excess taxes.

4. Learned Senior Counsel appearing for the petitioner invited this Court's attention to the original notice of proposal dated 14.07.2016 and the present impugned notice dated 24.08.2018 and submitted that both are verbatim similar except the date of notice. Therefore, he contended that when the petitioner has already replied to the notice dated 14.07.2016 and after considering such reply, when the Assessing Officer has passed the order of assessment on 09.09.2016, holding that the petitioner is entitled for refund of the same as stated supra, the present impugned notices cannot be issued by raising the very same allegation, as raised in the original notice dated 14.07.2016. In so far as the assessment year 2012-2013 is concerned, the learned Senior Counsel contended that though the Assessing Officer has not passed any order of assessment, since there is a deemed provision to presume that assessment order deemed to have been passed in respect of the assessment year 2013-14 in view of Section 22(2) of the TNVAT Act, the present impugned notices issued in respect of all the three years, cannot be sustained.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents contended that the respondent Assessing Officer is entitled to revise the assessment any number of times within the limitation period and therefore, the petitioner is not entitled to question the impugned notices. He further contended that even though an order of assessment was passed in respect of the assessment year 2013-14 and 2014-15 on 09.09.2016, the same was issued without considering the crux of the notice issued on 14.07.2016 and the reply submitted by the petitioner on 21.07.2016. Therefore, the learned counsel contended that the impugned proceedings need not be interfered with. Even though it is stated so by the learned Government Pleader, the counter affidavits filed, apart from dealing with other merits of the matter, have also indicated that the respondent shall withdraw the notice dated 24.08.2018 and issue a fresh notice, if this Court so directs.

6. Heard both sides.

7. It is seen that in respect of these assessment years, notice of proposal was issued on 14.07.2016 and the petitioner has filed their reply on 21.07.2016 and 05.09.2016. It is further seen that an order of assessment was made on 09.09.2016 in respect of assessment years 2013-14 and 2014-15. Perusal of the said order would show that the Assessing Officer has considered the reply of the petitioner dated 05.09.2016 and thereafter, concluded the assessment by holding that the petitioner is entitled for refund of excess amount as stated

supra. It is also not in dispute that the petitioner's refund claim is pending before the respondent and an order for considering such request was already made by this Court in W.P.No.14712 of 2017 dated 04.10.2017. Under such circumstances, the present impugned notices were issued.

8. Perusal of the contents of the notice dated 14.07.2016 and the present impugned notice dated 24.08.2018 would show that they are one and the same in respect of the allegation with regard to the non declaration of the taxable turnover. Further, the present impugned notice does not anywhere indicate as if the earlier assessment made on 09.09.2016, is sought to be revised based on certain reasons and circumstances. On the other hand, the present impugned notices are issued, as if it is the original notice of proposal itself, without there being reference to the earlier notice dated 14.07.2016 and the assessment orders passed on 09.09.2016. No doubt, the Assessing Officer is entitled to revise the assessment in any number of time, provided such revision is within the period of limitation. But at the same time, if the Assessing Officer is proposing to revise the assessment, the notice of proposal to revise such assessment should contain such reasons as to why revision of assessment is sought to be made. In this case, I find no such reason is stated and on the other hand, the impugned notices are verbatim the same as the one issued on 14.07.2016. Therefore, I find that the impugned notices, even though said to have been issued for revising the assessment already made, are not in conformity with the requirement of law for revising the assessment and therefore, the same cannot be sustained. However, the respondent, the Assessing Officer is entitled to give fresh notice for revising the assessment in accordance with law. Since the respondents themselves have chosen to withdraw the impugned notices with liberty to issue fresh notice, these writ petitions are disposed of, by permitting the respondents to withdraw the impugned notices with liberty to issue fresh notice to the petitioner in accordance with law. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Assistant Commissioner (CT),
Big Bazaar Street Circle,
Coimbatore.

2.The Deputy Commissioner (CT),
Zone I,
Coimbatore.

+1 cc to Mr.B.Raveendran, Advocate Sr.No.83505
+1 cc to The Special Government Pleader, Sr.No.83683

W.P.Nos.28656, 28660 and 28661 of 2018

KS(CO)
CSL/27.12.2018