BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.11.2018
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9119 of 2018
and
W.M.P.(MD)No.8501 of 2018

Madhucon Projects Limited,
represented by GVLN Sastry, Manager (F&A),
KM 216, NH 45, Madurai Tuticorin Road,
Senthilkkari, Ettayapuram,
Tuticorin. ... Petitioner

Vs.

The Commercial Tax Officer,
Ettayapuram,
Tuticorin District,
Pin: 628 902. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to Assessment Order CST Asst.No.764868/2011-12 dated 27.02.2018, passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.Aayiram K.Selvakumar
Additional Public Prosecutor

ORDER

The petitioner is an EPC contractor engaged in the business of construction of various infrastructure projects. He questions the impugned order dated 27.02.2018 issued by the respondent under Section 27(1) of TNVAT Act, 2006. The Assessment is in respect of the year 2011-2012. The petitioner has been filing his monthly returns and under Section 22 of the Act, the assessment was concluded on deemed assessment basis. This concluded assessment was sought to be reopened under Section 27 of the Act. Notices were issued and reply notices were submitted by the petitioner and thereafter the present order came to be passed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the petitioner took me to the notice dated 12.12.2017 issued by the respondent. The respondent vide the said notice called upon the petitioner to furnish the following documents.

"1.Name and address of the foreign seller from whom the goods were purchased (Agreement copy to be enclosed)

2.Name of commodity
3.Bill of Lading No. and Date (Copy of bill of lading to be enclosed.
4.Purchase invoice No. and Date (Copy of invoice to be enclosed)
5.Value of goods purchased
6.Date of endorsement of bill of lading (Endorse copy of Bill of lading to be enclosed)
7.Bill of Entry No. and date of the sale in course of import (Copy of BE to be enclosed)
8.Customs duty paid by whom
9.Chalan No. and Date (Copy of challan to be enclosed)
10.Date of clearance by the end buyer.
11.Invoice No.and date of sale in the course of import (Copy of invoice to be enclosed)
12.Value of goods sold
13.Name and address of the buyer"

The respondent also called upon the writ petitioner to file the following documents:

> "(5) You are also requested to file the copy of P & L account in respect of Tamil Nadu State for the year 2011-2012 in order to verify the correctness of the return filed for 2011-2012.
> (6) You are also requested to file a legible copy of records already filed by you in the reference 5th cited.
> (7) You are also requested to file connected F Forms for a tune of Rs.12,36,77,262/-."

4.The short submission of the learned counsel for the petitioner is that this communication dated 12.12.2017 cannot be called as a show cause notice in terms of the proviso to Section 27 (2) of TNVAT Act. Any show cause notice should be precise in the formulation of its tentative conclusions. In this case, the said communication dated 12.12.2017 called upon the petitioner to make available a set of documents. Therefore such a communication can only be characterized as a notice in terms of Section 63 of the TNVAT Act. Any Assessing Authority is empowered to call upon the assessee to produce the accounts and other relevant documents. Section 63(1) of TNVAT Act,2006, reads as under:

> "63.(1) Every dealer, liable to pay tax under this Act, shall make available to the assessing authority any account, register, record or other document relating to the day-to-day transaction of his business"

5.It is true that the petitioner was given an opportunity of personal hearing on 18.12.2017. But then, such an personal hearing will have to be granted after issuing a show cause notice. I have already come to the conclusion that the communication dated 12.12.2017 is not a show cause notice at all. It is only a communication under Section 63 of the Act.

6.The learned counsel appearing for the petitioner also drew my attention to the fact that all the pre assessment notices, proposed to levy tax @ 5%. But in the impugned order tax has been levied under 14.5%. There is a clear discrepancy between the tax proposed and the tax levied.

7.The learned counsel for the petitioner was ready to point out many more such errors characterizing the impugned proceedings.

8.I am of the view that the order impugned will have to be set aside on the short ground that the show cause notice as contemplated under Section 27(2) of the Act, was not issued. Therefore, the order impugned in this writ petition is set aside.

9.The matter is remitted to the file of the respondent who shall issue a proper show cause notice and after affording an opportunity of personal hearing to the petitioner herein pass order in accordance with law.

10.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To
The Commercial Tax Officer,
Ettayapuram,
Tuticorin District,
Pin: 628 902.

+1CC to Mr.Joseph Prabakar, Advocate, SR.No.94866
+1CC to the Special Government Pleader SR.No.94950

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