IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.1143 of 2019
and
W.M.P.Nos.1298 & 1300 of 2019

M/s. Senthamizh Construction and Projects Pvt Ltd.,
Represented by its Director,
Mr.T.Durgaprasad,
No.C.4, Bouganvilla Apartment,
6th Avenue, Anna Nagar,
Chennai-600102. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
   Ponneri Assessment Circle,
   No.21, New Cutchery Road,
   Ponneri-601204.

2. The Branch Manager,
   Bank of Baroda,
   3312,32, Nungambakkam High Road,
   Chennai-600034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/33701701814/2014-2015 dated 27.09.2018 and quash the same as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice and further direct the first respondent not to levy tax on the labour receipts of Rs.71,00,000/- and levy tax on the second sale of car at the concessional rate of tax at 5%.

For Petitioner : Mr.P.Rajkumar

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

O R D E R

The petitioner is aggrieved against the order of assessment dated 27.09.2018 passed in respect of assessment year 2014-2015.

2. The petitioner is a Civil Works Contractor. The original assessment for the year 2014-2015 was completed as deemed assessment under Section 22(2) of the TNVAT Act. Thereafter, a notice to revise assessment dated 21.08.2018 was issued on the petitioner by making certain proposals. The petitioner did not file their reply. Consequently, the Assessing Officer concluded the assessment and passed the impugned order.

3. The challenge made against the impugned assessment order is mainly on two grounds as follows:

a) The notice of proposal was not served on the petitioner and therefore, the petitioner cannot be found fault with, in not filing the reply.

b) In any event, the Assessing Officer is not justified in imposing 14.5% of tax on the sale value of two cars, while in fact, as per G.O.Ms.No.78 dated 11.07.2011, it is only 5%, which can be levied.

4. Mr.P.Rajkumar, learned counsel appearing for the petitioner, after reiterating the above contentions submitted that had the notice of proposal was served on the proper person of the petitioner, they would have certainly filed their reply and informed the Assessing Officer as to how the proposal made was factually incorrect. The learned counsel further contended that since the rate of tax levied at 14.5% itself is against the statute whereas it contemplates collection of only 5% the impugned order, in any event, has to go.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents produced xerox copy of the acknowledgment to show that the notice of proposal sent by RPAD had been served on the petitioner. Therefore, he contended that the petitioner is not entitled to canvas otherwise. However, insofar as the rate of tax is concerned, the learned Additional Government Pleader contended that the petitioner can agitate the matter by way of appeal.

6. Heard both sides.

7. Insofar as the first contention with regard to the service of notice is concerned, I am not able to appreciate the contentions raised by the petitioner, since the notice was served by a Registered post with acknowledgment due and therefore, the petitioner is not entitled to contend otherwise. However, while considering the next contention namely the rate of tax levied on the petitioner, I find that the above contention needs to be re-considered by the Assessing Officer, provided the petitioner files their reply and bring to the notice of the Assessing Officer as to what could be the actual rate of tax leviable. However, such indulgence can be shown only by putting the petitioner on some terms, since they failed

to file the reply.

8. Accordingly, this Writ Petition is allowed and the impugned assessment order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment under the following terms and conditions:

a) The petitioner shall send the reply to the notice of proposal along with 15% of the tax liability within a period of two weeks from the date of receipt of a copy of this order. The petitioner, while making their reply, is entitled to raise all objections with regard to the proposal made.

b) On receipt of such reply and payment of 15% tax liability, the Assessing Officer shall inform the petitioner specifically indicating the date of personal hearing .

c) On completion of such personal hearing, the Assessing Officer shall pass a fresh order of assessment on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sni/vri

To

1. The Assistant Commissioner (ST),
Ponneri Assessment Circle,
No.21, New Cutchery Road,
Ponneri-601204.

2. The Branch Manager,
Bank of Baroda,
3312,32, Nungambakkam High Road,
Chennai-600034.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No. 6422
+1cc to the Special Government Pleader, S.R.No. 7228

W.P.No.1143 of 2019

MR(CO)
GN(15/02/2019)