In the High Court of Judicature at Madras

Dated : 29.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.231 of 2019 & CMP.No.2391 of 2019

Tvl.P.Karuppasamy Gounder ...Appellant

Vs

The Assistant Commissioner (ST),
Pollachi Rural Assessment Circle,
Pollachi, Coimbatore District. ...Respondent

APPEAL filed under Clause 15 of the Letters Patent against the order dated 11.8.2018 made in WP.No.20620 of 2018, filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN.33702281680/2012-13 dated 13.03.2018 and to quash the same.

For Appellant : Mr.S.Ramanathan

For Respondent : Mr.Mohammed Shaffiq, SGP

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal is directed against the order dated 11.8.2018 passed in WP.No.20620 of 2018 filed by the appellant.

2. The appellant challenged the order of assessment dated 13.3.2018 passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act) for the assessment year 2012-13.

3. The challenge to the assessment order was primarily on two grounds namely (i) that no opportunity of personal hearing was granted before the assessment order was passed and this is against the provisions of Section 22(4) of the Act and (ii) that the respondent had no power to levy penalty for the equal addition portion and such levy is against the provisions of Section 22(5) Explanation I and II of the Act.

4. The learned counsel for the appellant would contend that the work done by the appellant involves only labour, as they were entrusted to maintain parks and lawns in dam, anaicut and canal, etc.

5. However, the learned Single Judge, by the impugned order, dismissed the said writ petition on the ground that the appellant has to avail the alternate remedy under the Act.

6. It is true that an appeal remedy is available to the appellant under the provisions of the Act. But, considering the nature of contract done by the appellant and the turnover, we deem it appropriate to grant one more opportunity to the appellant to go before the Assessing Officer to substantiate his case. Further, we find from the reply given by the appellant that he was not properly advised and the only stand taken by him is that already a sum of Rs.25,887/- towards the TDS amount is lying with the Department and that the same may be adjusted. No submission was made on the merits of the matter and more particularly with regard to the type of contract done by the appellant. For the above reasons, we are inclined to grant one more opportunity to the appellant, however, subject to a condition.

7. Accordingly, the writ appeal stands disposed of by directing the appellant to pay 15% of the tax demanded in the assessment order dated 13.3.2018 within two weeks from the date of receipt of a copy of this judgment. If the appellant complies with the said condition, the appellant is entitled to treat the assessment order dated 13.3.2018 as a show cause notice and submit his objections to the same. After receipt of the objections and the documents that the appellant may produce, the respondent - Assessing Officer shall afford an opportunity of personal hearing to the appellant and redo the assessment in accordance with law. It is made clear that if the appellant complies with the said condition, then the remaining amount of tax and penalty as demanded in the assessment order dated 13.3.2018 shall remain stayed till fresh orders are passed. If the appellant does not comply with the said condition within the time stipulated, the benefit of this order will not enure to the appellant and the writ appeal shall stand dismissed automatically. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST), Pollachi Rural Assessment Circle, Pollachi, Coimbatore District.

+1 cc to M/s.S.Ramanathan, Advocate, S.R.No.7936

WA.No.231 of 2019 &
CMP.No.2391 of 2019

VD(CO)
SSM(01/03/2019)