

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 02.04.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.16084 of 2015****and****W.M.P(MD) Nos.1 and 2 of 2015**

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G.K.C.Projects Ltd.,

Represented by its Deputy General Manager

P.Vijayakumar

... Petitioner

-vs-

1. The Assistant Commissioner(Commercial Taxes)
Pudukottai I Assessment Circle
T.S.No.5893/3,Kattupaudukulam
Pudukottai- 622 001

2. The Commercial Tax Officer
Pudukottai I Assessment Circle
T.S.No.5893/3,Kattupaudukulam
Pudukottai- 622 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records, in respect of the impugned Revised Assessment Order TIN.33824104826/2009-10 dated 09.04.2015 of the first respondent under the Tamil Nadu Value Added Tax, Act 2006, quash the same.

For Petitioner : Mr.Srinivasan.A
for Mr.V.Karthikeyan

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the order dated 09.04.2015, passed by the second respondent in TIN No. 33824104829/ 2009-2010.



2. It is the case of the petitioner that they are a registered dealer under Tamil Nadu Value Added Tax Act 2006 with TIN No.33824104829. It is their case that they have been regularly filing their monthly returns to the second respondent, which was also accepted under Section 22(2) of the Tamil Nadu Value Added Tax 2006. According to the petitioner for the assessment year 2009-2010 they have filed returns with some inadvertent errors and so they have filed revised returns, which was also accepted by the second respondent under Section 22(2) of the TN VAT Act 2006 on as deemed assessment basis on 14.06.2011. But according to the petitioner after expiry of three years and eight months, the first respondent issued a notice, dated 20.02.2005 proposing to revise the assessment on the ground that there was short reporting of turn over by the petitioner for the assessment year 2009-2010 amounting to Rs.38,49,663/-. As per the pre revision notice dated 20.02.2005, the petitioner was called upon to pay additional tax of Rs.2,84,875/- and penalty of Rs.1,42,438/-. It is the case of the petitioner that a detailed reply, dated 13.03.2015 was sent to the second respondent for the pre revision notice, dated 20.02.2015, wherein it has been stated that the petitioner is a Works Contractor and the total volume of the contract as per the Letter of of their sub- contract dated 11.05.2019 to M/s. Indu Projects Limited is Rs.65,31,50,345/-. Out of this the actual work done, in 2009-10 was Rs.53,63,65,788/- and for 2010-2011 was Rs.11,67,84,558/-, and the total due comes to Rs.65,31,50,346/-, which according to the petitioner tallies with the total contract value. According to the petitioner, excess total turn over reported in form-L returns was due to the reason that mobilization advances received were not deducted, while considering the actual RA bills at the time of filing the form-L Returns. According to the petitioner, without considering the objections raised by the petitioner in his reply, dated 13.03.2015 and without affording adequate opportunity to the petitioner including granting right of personal hearing, the impugned assessment order dated 09.04.2015 has been passed by the first respondent. Aggrieved by the said assessment order, dated 09.04.2015, the instant writ petition has been filed.

3. A counter affidavit has been filed by the second respondent, wherein, they have stated that the petitioner being Works contractor, or shall pay the tax as per Section 5 of the 'Act' by filing Form-I return every month as per Section 21 of the 'Act'. Further, they have stated that a Works contractor has options to select compounding system with prior permission of the Assessment Authority under Section 6 of the 'Act'. According to the second respondent if a contractor selects compounding system under Section 6 of the 'Act' he is not eligible to claim Input Tax credit. According to the second respondent originally the writ petitioner/dealer filed form- L return under compounding



system and paid tax for total receipt of amount under compounding system.

4. It is also their case that the petitioner after the lapse of four years, had filed revised return under Form-I under Section 5 of the 'Act', According to them once Form-I under section 6 of the Act is filed the writ petitioner cannot revoke the option of compounding system. According to the respondent as per compounding system, the dealer has to pay the tax for total receipt of the amount at 4% including advance amount. Hence according to them the petitioner cannot reduce the advance amount from the total turn over. Further, it is their case that the second respondent having considered the objection raised by the petitioner in accordance with law, the only remedy available to the petitioner is to file a statutory appeal, but instead he has approached this Court under Article 226 of the Constitution of India, which is not maintainable.

5. Heard Mr. A. Srinivasan, learned counsel appearing for the petitioner and Mr. Jeyakumar, learned Additional Government Pleader for the respondent.

6. The receipt of reply, dated 13.03.2015 sent by the petitioner to the pre revision notice, dated 20.02.2015 sent by the second respondent is not disputed by the second respondent and the same is also reflected in the impugned assessment order itself. Even though the first respondent has extracted the objections raised by the petitioner in the impugned assessment order, each and every objection raised by the petitioner is not duly considered by the first respondent, under the impugned assessment order.

7. Admittedly, in the instant case, the petitioner filed his monthly returns for the assessment year 2009-2010 on time which was also accepted by the second respondent under Section 22(2) of the 'Act', on deemed assessment basis. Immediately after coming to know that there were inadvertent errors in the earlier returns, the petitioner has filed the revised return for the assessment year 2009-2010 on 11.03.2011, which is accepted by the second respondent on 14.06.2011. Therefore, the contention of the learned Additional Government Pleader that the revised returns were filed by the petitioner after four years, is incorrect. However, in their reply dated 13.03.2015, the petitioner has specifically stated that there is no *mens rea* for non payment of taxes and therefore, imposition of penalty will not arise. The question as to whether there is *mens rea* or not has not been considered in the impugned assessment order. But without considering the aspect of *mens-rea*, in the impugned assessment order, a sum of Rs. 40,000/- has been assessed towards penalty payable by the petitioner. Further under the impugned assessment order, no personal hearing was afforded to the petitioner which is



mandatory as per the settled law laid down by various decisions of this Court.

8. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated by the second respondent under the impugned assessment order.

9. In the result, the impugned revised assessment order, dated 09.04.2015 passed by first respondent against the petitioner is hereby quashed and matter is remanded back to the first respondent for fresh consideration and the first respondent shall pass final orders in accordance with law after giving adequate opportunity to the petitioner, including granting them the right of personal hearing to raise all objections available to them under law, within a period of eight weeks from the date of receipt of a copy of this Order.

10. With the aforesaid directions, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar (CS)

To:

1. The Assistant Commissioner (Commercial Taxes)
Pudukottai I Assessment Circle
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2. The Commercial Tax Officer
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+1 CC to M/s.SPL GP (SR-58560, 59115[F] dated 03/04/2019)

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-58417[F] dated 02/04/2019)

AAV

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