BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019
CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.3708 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

M/s.Transstroy Dindigul-Theni-Kumli
Tollways Private Limited,
Represented by its Authorised Signatory Shaik.Raffee,
D.Vadipatti, Devathanapatti,
Periyakulam Taluk,
Theni District. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Theni-I. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings of the respondent made in TIN No.33945122290/2011-12 dated 24.10.2014 and quash the same as illegal and contrary to the poviso Rule 8(5)(c) of the Tamil Nadu Value Added Tax Rules, 2006.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Murugan,
Additional Government Pleader.

ORDER

Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.R.Murugan, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is a Special Purpose Vehicle incorporated as a concessionaire for effective implementation of a project under agreement dated 12.07.2010 between itself and the National Highways Authority of India (NHAI). The project is for augmentation of an existing road on the Dindigul – Theni – Kumuli Section of the National Highways Designed Phase III on Design, Build, Finance, Operate and Transfer (DBFOT) on annuity basis in accordance with the terms and conditions entered into between the parties. Pursuant thereto, the petitioner has entered into an agreement with its Holding Company ie., TRANSSTROY (India) Limited on 19.10.2010 for sub-contracting the execution of the project. The Holding Company is a registered dealer in terms of the provision of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

3.According to the petitioner, the entire project had been executed only by the Holding Company and the role of the petitioner in the project is merely as a facilitator and to arrange for funds for the execution of project. Though the project had been funded by the petitioner, the terms of the agreement between itself and the NHAI were to the effect that it would be reimbursed for this purpose by way of annuity paid by NHAI.

4.The place of business of the petitioner was inspected by the Enforcement Wing of the Commissioner of Commercial Taxes Department on 28.03.2012. Based on the same, the Enforcement Wing / Officials of the Department appear to have come to the conclusion that the petitioner has engaged in transactions that would be taxable and covered under the ambit of the Act.

5.A pre-assessment notice was issued, objections received and an order of assessment passed by the Assessing Authority that was challenged by the Writ Petitioner in W.P(MD)No.2758 of 2014.

6.The learned Single Judge of this Court, after hearing both sides, set aside the order of assessment, directing the Assessing Officer to consider the matter afresh on the basis of records produced by the petitioner, after affording opportunity of hearing.

7.The case of the petitioner in the aforesaid Writ Petition was that there is no liability to sales tax at all in regard to the activities carried on / the role played by it, in the transaction.

8.Pursuant thereto, a summon was issued by the respondent on 30.07.2014 and detailed written submissions dated 04.09.2014 (wrongly mentioned as 24.09.2013 in the impugned order) were received from the petitioner. The petitioner was also heard in person. The impugned order of assessment reflects the contentions advanced by the petitioner. However, I am hardly impressed by the manner in which the Assessing Authority has considered the objections.

9.It is the specific case of the petitioner that its role in the transaction does not result in the transfer of goods or give rise to any turnover liable to tax in terms of the provisions of the Act. Agreements have been produced between the NHAI and itself and thereafter between itself and its Holding Company to establish that the actual execution of the contract was only by the Holding Company. The petitioner has also significantly averred that the Holding Company has remitted the tax on the works contract executed by it. In support of its contention as aforesaid, the petitioner has annexed (i) its financials that, according to it, reveal that there is neither revenue from sales nor payments made to the contractor for execution of works contract; (ii) Auditors' report for the year 2011-12; (iii) return filed at AC, Tuticorin Office by the Holding Company; (iv) appellate order passed by the Deputy Commissioner (CT) (FAC), Vellore; (v) order passed by the CTO, Thiruvannamalai for the year 2012-13 and 2013-14; (vi) order passed by the Assistant Commissioner, Tuticorin for the year 2011-12;

10.None of these documents are even referred to in the impugned order. No doubt, it is for the Assessing Officer to draw his own conclusion from the same, but only after consideration of the evidence produced and explanation offered by the petitioner. Only this will ensure that the transaction is appreciated in the proper context. A perusal of the order of assessment does not, unfortunately, inspire the Court that this has, in fact, been done. I am, thus, constrained to set aside this assessment yet again, though I am conscious that the petitioner is in the second round of litigation. The manner in which the matter has been approached in regard to the stand of the Assessee, leaves me with no other option.

11.The Assessee will appear on 14.08.2019 at 10.30 a.m., before the Officer and no further notice need be issued in this regard. The Assessee will be heard in full and after taking into consideration all documents and evidences produced, a speaking order will be passed by the Assessing Officer. This exercise shall be completed within a period of six (6) weeks from date of conclusion of personal hearing.

12.In the light of the aforesaid, the impugned order is set aside and this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner (CT), Theni-I.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-78904[F] dated 31/07/2019)
+1 CC to M/s.SPL GP (SR-79241[F] dated 01/08/2019)

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