IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 2207 of 2016

and
W.M.P. No. 1899 of 2016

Tvl. Abirami Engineering Constructions & Co.,
Represented by its Partner,
K.R. Subramaniyam,
No. 5/252, Teachers Colony,
Mohanur Road,
Namakkal - 637 001. ... Petitioner

-vs-

The Assistant Commissioner (CT),
Namakkal (Rural) Circle,
Namakkal. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent in TIN. 33643101848/2010-11 dated 22.12.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr. R. Senniappan

For Respondents: Mr.A.N.R.Jayaprathap, Government Advocate

O R D E R

(through video conference)

Heard Mr. R.Senniappan, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. TIN 33643101848/10-11 dated 22.12.2015 passed by the Respondent assessing the liability of the Petitioner for tax for the year 2010-2011 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short).

3. It is submitted by the Learned Counsel for the Petitioner that in response to the Notice No. TIN 33643101848/10-11 dated 12.11.2015 received from the the Respondent, the Petitioner had sent a reply dated 02.12.2015 in which it has been stated as follows:-

> " With reference to the above we brought to you kind notice that the following. The opening ITC of Rs. 2,42,532/- as per April 2010 Return and closing ITC of 4,78,9860/- as per March - 2011 return is not correct. The actual opening ITC is Rs. 2,00,804/- and the closing ITC is Rs. 2,38,121/- and the same is declared in the annual return for 2010 - 11 and the copy same is enclosed for your reference.
>
> The above said case was randomly selected for detailed scrutiny. We are maintaining proper books of accounts, bills, vouchers, etc., All the above was thoroughly verified and an order was passed by the commercial tax officer, Namakkal (Rural) on 04.06.12 and the copy of the same is enclosed herewith. We are constructing college building, lab building, school class rooms, compound walls, bathrooms, toilets, combined court building with residence during the year of account. All are Evidenced by proper books of accounts, Invoice, and other relevant documents.
>
> The estimate of 15% towards the labour on Gross Receipts has not relevance. It is purely a civil contract work. There is a closing working progress of Rs. 30,27,676/- which includes the value of work completed pending payment and value of stock of goods at site at the end of the year. While comparing the value of opening and closing working progress the claim of opening and closing ITC is not a huge amount. Hence the question of non maintance of proper accounts is not correct and the proposal to revise the assessment does not arise. Hence it is kindly requested you to drop your proposal and do the needful.
>
> Moreover we hereby undertake to produce the books of accounts bills, Vouchers, etc., as and when required for your verification. Kindly do the needful."

Though it is evident on a reading of that reply that the Petitioner has expressly undertaken to produce book of accounts, bills, vouchers, etc., as and when required for verification, the Respondent has proceeded to pass the impugned order on 22.12.2015 by holding that the Petitioner had filed only reply and had not produced any documentary evidence in the absence of which the details in the reply of the Petitioner could not be ascertained.

4. When the Petitioner has specifically informed that it is prepared to produce necessary documents for verification of the Respondent to substantiate its explanation in the reply, it is really incomprehensible as to how the Respondent could brush aside the objections raised in that reply on the specious plea that the supporting documents had not been produced for verification, without requiring the Petitioner to produce the same. Such faulty process of decision-making certainly vitiates the impugned order as breach of the principles of natural justice and has to be necessarily interfered and the matter remitted for fresh consideration. As such, the impugned Order No. TIN 33643101848/10-11 dated 22.12.2015 passed by the Respondent is set aside. It shall be incumbent upon the Petitioner to submit all the book of accounts, bills, voucher, etc., in support of the objections raised in its reply dated 02.12.2015 before the Respondent on or before 31.12.2020 under written acknowledgment. The Respondent shall conduct enquiry affording opportunity of personal hearing to the Petitioner to explain its position with supporting documents and shall deal with each of the contentions raised following the procedure prescribed in consonance with the principles of natural justice and pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

In the result, Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Maya/vjt

To

The Assistant Commissioner (CT),
Namakkal (Rural) Circle, Namakkal.

1 cc to Spl.G.P. (Taxes), Sr. 39188

W.P. No. 2207 of 2016

BP (CO)
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