IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34822 of 2016
and
W.M.P.No.29980 of 2016

M/s.Dekshinamoorthi & Co.,
rep. By its Partner, D.Govindarajan,
No.14, Ellaiamman West Street,
Tiruvarur - 613 001.

Now at
F3, Sharada Residency,
No.52/21, P.R.P.Garden,
Peechamedu, Coimbatore-641004 ..Petitioner

Versus

1The Commercial Tax Officer,
CT Buildings,
Thanjavur Bye-Pass Road,
Thiruvarur - 610 001.

2.The Assistant Commissioner (CT)
Avarampalayam Assessment Circle,
Dr.Balasundaram Road,
Coimbatore - 641 018. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the 1st respondent in CST 223991/2001-2002 dated 26.04.2013 which was served on the petitioner on 25.05.2016 and quash the same as illegal, arbitrary and against the directions given by this Court in W.P.No.14296 of 2011 dated 25.08.2011.

For Petitioner : Mr.K.Soundararajan
Mr.S.Prabhakaran

For Respondents : Mr. A.N.R.Jayaprathap, G.A.

O R D E R

The petitioner is aggrieved by the impugned order passed by the 1st respondent, pursuant to directions of this Court dated 25.08.2011 in W.P.No.14296 of 2011.

2.The petitioner claims to be a dealer in Grams and was registered under the TNGST Act, 1959 and CST Act, 1956 and had filed returns during the period 2001-02 and quoted a taxable turn over of Rs.1,90,06,512/- under TNGST and nil taxable return under CST. It appears the petitioner's premises was inspected by the Officers of the Enforcement Wing on 04.07.2001 and 19.07.2001 and certain documents were recovered and based on such inspection and the recovery of material, it was concluded that the petitioner was issuing bills in the name of 58 buyers with a view to suppress as well as to evade CST. Under these circumstances, the sale bill dated 28.04.2001 issued in the name of M/s.Nandhini Traders, Chennai was recovered.

3.It is stated that the said Nandhini Traders had already closed down the business and therefore, the petitioner had evaded tax. Notices were issued to the petitioner and the petitioner called upon the respondents to furnish the documents based on which, the demand of tax was made on the petitioner.

4.These proceedings ultimately culminated in an order dated 31.12.2010 determining the taxable turn over of Rs.96,23,5000/- for the assessment year 2001-02. The petitioner therefore filed a writ petition in W.P.No.14296 of 2011. Based on the undertaking given by the Government Advocate, this Court, by its order dated 25.08.2011 set aside the said order 31.12.2010 and remitted the case back to the respondent with a direction to furnish the copies of the documents sought for by the petitioner by letter dated 13.12.2010 within a period of 3 weeks from the date of receipt of a copy of that order and on receipt of the same, the petitioner was directed to furnish their reply for the 1st respondent to pass appropriate orders.

5.It appears that pursuant to the direction of this Court on 25.08.2011 in W.P.No.14296 of 2011, certain documents were dispatched to the petitioner on 02.11.2011. The petitioner, thereafter, filed a reply on 24.11.2011 and requested for other documents as all the documents were not enclosed to the letter dated 02.11.2011. Thereafter, it appears remainders also were sent by the petitioner. Meanwhile, one of the partner of the petitioner was also filed another W.P.No.36004 of 2015 for quashing the attachment of the bank account and by an order dated 06.11.2015, the 1st respondent was directed to consider the reply filed by the petitioner and verify whether any assessment order has been passed pursuant to the dated 25.08.2011 order of this Court in W.P.No.14296 of 2011.

6.It is the categorical stand of the petitioner that the documents purported to have been sent vide letter dated 02.11.2011 were never received and therefore, the petitioner has not been able to file a reply and therefore, the impugned order passed in violation of principle of natural justice.

7.Though a detailed counter has been filed by the respondent, there is no specific denial to the allegation of the petitioner that the documents had not been served in person. Since the impugned order has been passed without furnishing the documents and the impugned order is merely based on the averments that the documents were served to one Tmt.Leelavathi on 05.12.2011, I am inclined to interfere with the impugned order in this writ petition by quashing the impugned order by remitting the case back to the respondent to pass fresh orders.

8.Accordingly, the impugned order is set aside. The petitioner is therefore directed to appear before the respondent on the 1st instance before the 1st respondent on 30.06.2020 to collect the documents specified in letter dated 02.11.2011. The petitioner shall thereafter file a fresh reply to notice within a period of 30 days. The respondent shall thereafter pass appropriate orders in accordance with law after hearing the petitioner within a period of three months thereafter through videoconferencing, if situations so warrants on account of continuance of Covid19 pandemic.

9.This writ petition stands disposed of with the above observation and direction. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Arul

To

1The Commercial Tax Officer,
CT Buildings,
Thanjavur Bye-Pass Road,
Thiruvarur - 610 001.

2.The Assistant Commissioner (CT)
Avarampalayam Assessment Circle,
Dr.Balasundaram Road,
Coimbatore - 641 018.

W.P.No.34822 of 2016

LN(CO)
GMY(10/06/2020)