IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

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

W.P. No. 3070 of 2014
and
M.P. No. 1 of 2014

M/s. G.K.Shetty Builders Pvt. Ltd.,
Rep. by its Managing Director: Sir Ramana Shetty,
No. 3, Club Road,
Chetpet,
Chennai – 600 031. ... Petitioner

-vs-

The Commercial Tax Officer,
Egmore II Assessment Circle,
Spurtank Road,
Egmore,
Chennai – 600 031. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the Respondent in TIN: 33080540386/2010-11 dated 31.12.2013 (served on the Petitioner on 23.01.2014) and quash the same as violative of principles of natural justice, contrary to facts and unsustainable.

For Petitioner : Mr. M.A.Mudimannan

For Respondent : Mr. Mohammed Shaffiq,
Special Government Pleader

O R D E R
(through video conference)

Heard Mr. M.A.Mudimannan, Learned Counsel for the Petitioner and Mr. Mr. Mohammed Shaffiq, Learned Special Government Pleader appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is apparent from the materials placed on record that a deemed assessment was made in respect of the Petitioner for the year 2010-2011 as per G.O. Ms. No. 83/CT&R (B1) Department dated 18.06.2012 issued by the Government of Tamil Nadu. Subsequently, the officials of the Enforcement Wing had conducted VAT audit of the accounts of the Petitioner on 01.04.2013 and 27.05.2013 and Notice No. TIN: 3308054386/10-11 dated 25.10.2013 was issued requiring the Petitioner to submit objections for the proposal to enhance the tax amount payable for the year 2012-2013 with penalty and interest as per law. The Petitioner had submitted a reply dated 13.12.2013 in response to the queries raised by the Respondent and for this purpose, the relevant portions read as follows:-

Sl. No.	***Year and Point No.***	***Particulars***	***Remarks***
12	*1/2010-11*	*You have purchased materials and used to execute the construction from un-registered / Registration Certificate cancelled dealer for which you have requested to furnish various documents such as lorry Receipt, and inward movement register to substantiate ITC Claimed by you. But, you have not filed the relevant document as such. In view of the above the entire ITC claimed by you reversed as detailed below:*	*We don't know about Cancellation of their TIN Number, but we have paid the full amount against their bills including Vat amount. They have collected Vat amount from us.*
13	*2/2010-11*	*On verification of your monthly returns therein identified that you have claimed ITC for Automobiles which is against the provisions of the TNVAT Act 2006. However, your claim of ITC is to be reversed under section 19(7)(b) of TNVAT Act 2006, as detailed below:*	*We have calculated and paid the amount on 19.04.2013 Vide our Cheque No.11129752 / 19.04.2013*
14	*3/2010-11*	*On verification of your purchase invoices it is identified that you have claimed ITC on interstate purchases, which is in eligible under section 19(5)(b) of the TNVAT Act 2206. However, the claim of ITC is to be reversed as detailed below:*	*We have paid the amount on 19.04.2013 Vide our Cheque No.11129752 / 19.04.13-As per Annexure "B"*
15	*4/2010-11*	*You have received miscellaneous Income by the way of sale of the value of Rs.1385147/- @ 4% is Rs. 55,406/-*	*A sum of Rs.13,72,210/- received as Compensation from our Client OTM and*

		which is not disclosed by in the montly returns filed by you. However, you have requested to pay tax Rs.55406/-	*Rs.12937 recd as discount from Tata Lorry on Purchase of Lorry. Hence Tax does not arise.*
16	*5/2012-13*	*During the course of audit, your balance sheet have been verified and identified that you have made sale proceed for the value of Rs.315500/- @4% tax Rs.1620/- and Rs.3000/- @12.5% is Rs.375/-, you have requested to pay Rs.12995/-*	*We have calculated and paid the amount on 19.04.2013 vide our Cheque No.11129752 / 19.04.13- As per Annexure "A"*
17	*6/2010-11*	*During the course of audit your balance sheet have been filed, verified and identified that you have made addition of plant and machinery for which you have not produced bills, whether the tax levied or not at appropriate rate However, the addition value is arrived as detailed below:*	*All Fixed Asset purchases were made whether within Tamil Nadu / outside Tamil Nadu, the applicable tax rate has been suffered in the bill. None of the Fixed Asset purchases from Unregistered Dealers*

3. The Respondent in the Order in TIN: 33080540386/2010-2011 dated 31.12.2013 passed thereafter has observed as follows:-

> *" However, a notice was issued to you vide reference 3rd cited dated on 25.10.2013, to you to tender exact reply and objection, for which you have filed a reply vide reference 4th cited, which was scrutinized and identified that you yet to respond to this notice by way of proper reply as well as*

document. But, you have filed not in proper the above said required particulars for your claim of exemption and to substantiate the claim of exemption as well as proof."

On that premise, the Respondent has levied additional liability for tax with penalty against the Petitioner. The said order is challenged in this Writ Petition.

3. A bare perusal of the impugned order reveals that the Respondent has not considered the explanation of the Petitioner for the queries raised in the notice. That apart, if the Respondent was not satisfied with the explanation submitted by the Petitioner for the queries, it was incumbent upon the Respondent to have afforded an opportunity of personal hearing to the Petitioner to explain its position with supporting materials before taking any final decision entailing adverse civil consequences to the Petitioner. Moreover, there is conspicuously no discussion as to how the Respondent has arrived at the conclusion that the liability of the Petitioner for tax and penalty has to be enhanced. In that view of the matter, it is not possible to sustain the impugned Order in TIN: 33080540386/2010-2011 dated 31.12.2013 passed by the Respondent and consequently, the same is set aside and the matter is remitted to the Respondent to be decided afresh following the prescribed procedure in consonance with the principles of natural justice.

4. In order to expedite the proceedings, Learned Counsel for the Petitioner as well as the Respondent, on instructions from the respective parties, agree for conduct of enquiry at 11.00 a.m. on 27.11.2020 before the Respondent to provide personal hearing to the Petitioner or its authorized representative, and the said submissions made are placed on record.

5. The Respondent, after affording full opportunity of personal hearing, shall deal with each of the contentions raised and shall pass reasoned orders on merits and in accordance with law, uninfluenced or uninhibited by the impugned order, which has been set aside, and shall communicate the decision taken to the Petitioner under written acknowledgment.

6. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.11.2020
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vjt
Index: Yes/No
Note: Issue order copy by 23.11.2020.

To

The Commercial Tax Officer,
Egmore II Assessment Circle,
Spurtank Road,
Egmore, Chennai – 600 031.

Copy to

M/s. G.K.Shetty Builders Pvt. Ltd.,
Rep. by its Managing Director: Sir Ramana Shetty,
No. 3, Club Road,
Chetpet,
Chennai – 600 031.

P.D. AUDIKESAVALU, J.

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