IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20.07.2020
PRONOUNCED ON	03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.33909 OF 2017
AND
W.M.P.NO.37610 OF 2017

M/s.Global Engineers,
Rep.by its Proprietor,
Mr.Murugesan,
No.6, Jeevarathnam Main Road,
KSR Nagar, Ambattur,
Chennai 600 053. ... Petitioner

Vs

1. The Commercial Tax Officer,
   JJ Nagar Assessment circle,
   Shop No.38&39, Tamil Nadu Slum
   Clearance Board Shopping Complex,
   Tirumangalam, Anna Nagar,
   Chennai- 600 040.

2. The Manager,
   State Bank of India,
   SME, SIDCO Industrial Estate,
   Ambattur, Chennai. ...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN/33711441703/2013-2014 dated 14.03.2017 and quash the same as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents: Mrs.Dhana Madhri,
Government Advocate for R1

ORDER

Today, the matter is called through video conferencing. By consent of both the parties, this writ petition is taken up for final disposal.

2. Through the impugned order dated 14.03.2017, the first respondent herein had assessed the petitioner to the best of Judgment under Section 27(1) of the Tamil Nadu Value Added Tax Act (TNVAT) with penalty under Section 27(3) for the assessment year 2013-14. Prior to the impugned order, the first respondent had issued notices dated 03.08.2016 and 12.09.2016, proposing to reverse the input tax credit under Section 19(5)(c) and 19(2)(v) of the TNVAT Act. As per the notices, the proposal was for reversal of the input tax credit as well as for levy of tax on certain export and pre-export sales. The petitioner had filed his objections on 22.09.2016.

3. The learned counsel for the petitioner, predominantly raises a ground that most of the reversal of the input tax credit as well as the levy of tax was done without a proposal in the earlier show cause notices sent. The copies of the notices have also been produced before this Court and on a perusal of the same, it is seen that the impugned order levying tax at 14.5% on a sum of Rs.56,29,522/-, as well as the reversal on input tax credit under Section 19(5)(c) to the tune of Rs.3,18,883/- treating it as inter state sales to un-registered dealers and a further sum of Rs.43,682/- claimed as excess input tax credit was not preceded by a proposal in the show cause notices.

4. It is further seen that the first respondent had rejected the Form-H filed by the petitioner claiming it to be incomplete and thereby, the turn over therein was subjected to assessment of tax.

5. When the first respondent had chosen to assess the petitioner to the best of Judgment under Section 27(1) of the Act, there is a duty cast on them to indicate the proposal to the assessee in the show cause notices. It is not in dispute that such proposals were not made in the prior notices. As such, the consequent impugned order itself cannot be sustained.

6. Furthermore, when the first respondent was of the view that the Form-H submitted by the petitioner was incomplete or defective in nature, in all fairness, the first respondent ought to have returned the same to the petititioner for rectification instead of rejecting the same.

7. For all the foregoing reasons, the impugned order dated

14.03.2017 is quashed and the matter is remanded back to the first respondent for passing fresh orders, after giving due opportunity to the assessee. The first respondent herein shall endeavour to complete to proceedings, atleast within a period of 60 days from the date of receipt of a copy of this order. Further, the first respondent shall return the Form-H, referred to in the impugned order dated 14.03.2017, to the petitioner for rectification and representation, atleast within a period of one week from the date of receipt of a copy of this order. If necessary, an opportunity of personal hearing to the assessee shall be extended through Video Conferencing during the period of lockdown owing to the COVID-19 Pandamic.

8. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
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2. The Manager,
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+1cc to the Special Government Pleader (T), S.R.No.25982

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LN(CO)
CS/18/08/2020