

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.6884 of 2016
and
W.M.P.Nos.6117 & 6118 of 2016

M/s.J.K.Constructions,
Rep., by its Partner - A.P.Nandakumar,
Annangudi Village,
Latteri Post, Katpadi Taluk,
Vellore District. ...Petitioner

-vs-

- 1.The Commercial Tax Officer,
Gudiyatham (East),
Gudiyatham,
Vellore District.
- 2.The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore,
Vellore District. ...Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records on the file of the 1st respondent made in TIN
No.33364244177/2012-13 dated 29.01.2016, quash the same which is
contrary to the provisions of TNVAT Act, 2006.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.R.Swarnavel,
Government Advocate (Tax)

ORDER

The impugned order, passed by the first respondent dated
29.01.2016, is sought to be quashed in this writ petition.

2.The learned counsel for the petitioner mainly contended
that the Appellate Deputy Commissioner (CT), Vellore passed an
order on 30.04.2015 allowing the claim of the petitioner. In

this regard, the Appellate Deputy Commissioner made a finding, which reads as follows:-

"I find from the nature of work details furnished by the appellant at the time of hearing that majority of the work done by the appellant involved predominantly labour work and therefore transfer of material in these works (Rs.47,16,864/- + Rs.49,14,176/- + Rs.3,64,68,808/-") Rs.4,61,00,148/- cannot be at the rate of 70% as adopted by the Assessing Officer. The defect pointed by the inspecting officer do not indicate any purchase or sales omission. Rule 8(5)(d) of TNVAT Rules 2007 is not mandatory and it gives only the directions in the absence of proper accounts. In the case of the appellant no omission found and accounts are audited and certified. Relying on various decisions I feel that arrival of deemed sale value as Rs.8,74,96,368/- at 5% and Rs.1,79,20,943/- at 14.5% is not sustainable and therefore I delete the levy of tax. This portion is allowed."

3.Relying on the above order passed the Appellate Deputy Commissioner, the learned counsel for the petitioner reiterated that the impugned order cannot be sustained at all. The impugned order speaks about the issues, which were considered by the Appellate Deputy Commissioner in detail and therefore, the order passed by the Commercial Tax Officer, Vellore, who is a subordinate authority, is liable to be set aside.

4.It is contended that the works contract mentioned in the impugned order dated 29.01.2016, reveals that the very same works contract were already adjudicated by the Appellate Deputy Commissioner and the value of the total contract was also considered by the Appellate Deputy Commissioner and the claim of the petitioner was allowed in respect of certain portions.

5.In view of the fact that the Appellate Deputy Commissioner considered the issues elaborately and allowed portion of the claim set out by the petitioner, the Commercial Tax Officer cannot pass any order contrary to the orders passed by the Appellate Deputy Commissioner and therefore, the Commercial Tax Officer exercised excess jurisdiction, which is impermissible.

6.The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that after the Appellate Deputy Commissioner's order, an inspection was conducted and based on the inspection, new materials were found.

Based on such inspection, revision orders were passed by the Commercial Tax Officer in proceedings dated 29.01.2016 and therefore, such an order cannot be compared with the order of the Appellate Deputy Commissioner, as new materials were taken out from the premises of the petitioner. In other words, it is contended that the impugned orders have been passed based on certain commissions and omissions and based on the records confiscated. This being the factum, the writ petition is liable to be dismissed.

7.The learned Government Advocate further brought to the notice of this Court that against the order of the Appellate Deputy Commissioner, Appeal was already filed by the Department before the Tribunal under the provisions of the Act in the year 2016 itself and the said appeal is pending before the Tribunal.

8.This Court is of the considered opinion that in respect of the said appeal filed by the respondent-Department before the Tribunal, the respondents are at liberty to pursue the matter pending before the Tribunal and the Tribunal is expected to consider the appeal on merits and pass orders in accordance with law by affording opportunity to the parties.

9.As far as the present writ petition is concerned, the impugned order dated 29.01.2016 is clear that the issues considered by the Appellate Deputy Commissioner were considered by the Commercial Tax Officer and the order was passed, which runs counter to the order passed by the Appellate Deputy Commissioner. The subordinate authority is not empowered to supersede the orders passed by the appellate authority and an administrative discipline requires that the subordinate authorities should follow the orders of the appellate authority and even if any lapse, error or otherwise, the subordinate authority is bound to approach the appropriate higher authority for the purpose of setting aside the order passed by the appellate authority.

10.Now, it is the case of the respondent that they have already filed appeal against the order of the Appellate Deputy Commissioner. This Court grants liberty to the respondents to pursue the said appeal filed before the Tribunal. Contrarily, the Commercial Tax Officer is not empowered to pass any order, which is running counter to the order passed by the Appellate Deputy Commissioner and therefore, such order is perverse and not in conformity with the principles of administrative law as well as discipline.

11.In view of the above facts and circumstances, the impugned order passed by the first respondent in TIN No.33364244177/2012-13 dated 29.01.2016, is quashed and the

respondents are at liberty to pursue their appeal already filed before the Tribunal in accordance with the procedures contemplated.

12. Accordingly, the writ petition stands allowed. The parties to the appeal pending before the Tribunal are at liberty to file their additional grounds, pleadings or documents, if any and even on filing any such additional grounds, pleadings or documents, the Tribunal is expected to receive and consider the same on merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1. The Commercial Tax Officer,
Gudiyatham (East),
Gudiyatham,
Vellore District.

2. The Appellate Deputy Commissioner (CT),
Commercial Taxes Building,
Vellore,
Vellore District.

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.22627

+1cc to The Special Government Pleader(Taxes), S.R.No.22613

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W.P.No.6884 of 2016

PMK(CO)
RN(11/05/2021)