IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25435 of 2021
and
W.M.P.No.26868 of 2021

(Through Video Conferencing)

M/s.R.P.S & Co.,
Represented by its Partner,
No.3, Mosuvana Lane,
SKC Road, Erode - 638 001. ... Petitioner

Vs

The Assistant Commissioner (ST) (FAC),
Brough Road Circle, Erode. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned Assessment Order for the year 2014-2015 bearing Ref.No.33683004050/2014-2015 dated 28.09.2021 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirta Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned order dated 28.09.2021 on the ground that the order has been passed without giving an adequate opportunity to the petitioner to file a reply to the Show Cause Notice dated 18.04.2018.

3. It is the case of the petitioner that the petitioner's Managing Partner died on 26.08.2021 and therefore the petitioner

could not file a reply immediately. It is further case of the petitioner that the petitioner had obtained Form-S from the Jurisdictional Assessing Officer to the effect that employer for whom the petitioner firm was rendering works contract was not required to deduct tax and therefore there is no justification in confirming the demand.

4. The learned counsel for the petitioner submits though the petitioner has an alternate remedy by way of an appeal, the petitioners' case would be eventually remitted back and the matter would require further reconsideration by the Assessing Officer.

5. Opposing the prayer, the learned Government Advocate for the respondent submits that it is not correct to state that the petitioner was issued with a Show Cause Notice for the first time on 23.08.2021. The learned Government Advocate further submits that earlier a notice was issued on 18.04.2018, to which there was no reply and therefore almost after a lapse of 3 ½ years, the second notice was issued on 23.08.2021 and since there was no reply and the impugned order has been passed based on the records that are available.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

7. The petitioner has been callous in not sending reply to the Show Cause Notice dated 18.04.2018 and the second notice dated 23.08.2021, though there are mitigating circumstances on account of the death of the Managing Partner of the petitioner on 26.08.2021.

8. Since the dispute would require reconsideration by the respondent, this Court is of the view that the impugned order can be set aside and the case be remitted back to the respondent for fresh consideration subject to terms. Under these circumstances, the impugned order is quashed subject to the petitioner remitting the amount equivalent to 30% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order.

9. On such amount being remitted by the petitioner, the respondent shall proceed to pass appropriate orders on merits and in accordance with law within a period of thirty days from the date of receipt of a copy of this order.

10. In case the petitioner fails to remit the aforesaid amount or to give a reply to the Show Cause Notices dated

18.04.2018 and 23.08.2021, the respondent shall pass appropriate orders after reiterating the content of the impugned order.

11. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

arb/nst

To

The Assistant Commissioner (ST) (FAC),
Brough Road Circle, Erode.

+1cc to Mr.Adithya Reddy, Advocate SR.No.64540
+1cc to Special Government Pleader(Taxes), SR.No.64741

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and
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GPL(CO)
CB(20/12/2021)