BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **29.07.2021**
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.10142 of 2021
and
WMP(MD)Nos.7865 & 7866 of 2021

K.M.V.Projects Limited,
Rep. by its Authorised Signatory
Allala Bhasker Reddy
Hyderabad - 500073 ... Petitioner

Vs.

The Commercial Tax Officer (Main),
(Now Designated as "The State Tax Officer"),
Pudukkottai-II Assessment Circle,
Commercial Tax Building,
Behind New Bus Stand,
Pudukkottai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN:33584123873/2012-13, dated 28.08.2017 and quash the same as illegal and arbitrary.

For Petitioner : Mr.J.Prasanna Kumar
For Respondent : Mr.P.Thilak Kumar
Govt.Advocate

O R D E R

This Writ Petition has been filed praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in TIN:33584123873/2012-13, dated 28.08.2017 and quash the same as illegal and arbitrary.

2. The brief facts of the case are as follows:-

(i). The Petitioner Company having its Registered office at Hyderabad is promoted in the year 2007 and incorporated as a Company, under the Companies Act, 1956. The Petitioner is engaged primarily in the field of construction of industrial and institutional infrastructure in various states of Southern India. The Petitioner had its branch/site office at No. 3, Aravankadu, Kadiyapatti, Tirumayam Taluk, Pudukkottai and registered itself under the Tamil Nadu Value Added Taxes, 2006, for its works contracts business executed in the state of Tamil Nadu. The company being a works contractor, is assessed to TNVAT taxes by the

Respondent. Upon introduction of GST in July 2017, the Company closed its branch Kadiyapatti and migrated to GST tax regime as its principal place of business at Thanjavur Medical College, Thanjavur Medical College Road, Thanjavur - 613004. The Petitioner did its civil works contract services to NFC, BHEL, HLL Lifecare Limited for the financial year 2012-13 in the state of Tamil Nadu. The Petitioner company had its works contract receipts for the financial year 2012-13 totalling Rs. 29,94,70,827/-, which is verified, and total turnover determined by the Respondent in their Orders.

(ii). The Petitioner had its registration under the category of Works Contractor, under the TNVAT Act and filed its monthly returns under the TNVAT Act and assessed itself u/s 5 of the TNVAT Act, by paying taxes on its value of the transfer of property involved in the execution of the works contracts done within the State of Tamil Nadu. The Respondent, accepting the monthly returns for the Financial year 2012-13 duly filed by the Petitioner, has assessed the Petitioner under deemed assessment u/s 22(2) of the TNVAT Act in TIN: 3358412873/2012-13 on 31.10.2013. The Petitioner has reported a total turnover of Rs. 29,94,70,831/- and paid taxes on the value addition made in the materials involved in the works contracts. The Materials involved in the execution of works contracts for the Financial Year 2012-13 were worked out to be Rs. 15,00,00,781/- and the same was duly reported in the monthly returns flied by the Petitioner and claimed deduction/exemption under u/s 8 of the TNVAT Rules towards the Labour Charges involved/attributable in the Civil Works contracts done by the Petitioner. Section 5 of the Act provides for levy of tax on the transfer of property in goods involved in the execution of works contract. The TNVAT Rule 8(5) provides the method of computing the taxable turnover of the dealer liable to pay tax.

(iii) The Works contract assessment is deemed to have been made by the Respondent u/s 22(2) of TNVAT Act, taxing the amount of Rs. 15,00,00,781/-, being the value of the goods involved by the Petitioner, in the execution of the Works contracts for the Assessment year 2012-13. The Respondent after detailed scrutiny of the VAT monthly Returns fled by the Petitioner, has concluded the assessment u/s 5 of the TNVAT and passed an order dated 18.05.2015, allowing the petitioner's claim for exemption under Section 8(5) of the TNVAT Rules towards labour charges and gross profit. The Petitioner further submits that the books of accounts maintained by the Petitioner was duly audit under Section 63-A of the TNVAT Act and an Audit Report in Form-WW, duly signed by a Chartered Accountant was also submitted to the Respondent.

(iv) According to clause 29A of Article 366 of the Constitution of India, tax on sale or purchase of goods includes "a tax on transfer of property in goods (whether as goods or in some other form) invoked in the execution of works contract." It is clear from this clause that VAT is leviable on transfer of goods involved in execution of works contract. The Petitioner states and submits that as per the Service Tax (Determination of Value) Rules —service tax shall be payable on 40% of the total amount charged for the works contract. For that purposes, the total amount would mean the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract.

(v) The TNVAT Act prescribes a standard deduction of 30% towards Civil Works Contracts, in fact, that the Petitioner is duly filing its service tax Returns and paying the service tax on the 40% of the whole value of Works contracts receipts, which is more the 10% prescribed, under the TNVAT Act, but the Respondent has completely failed to take note this aspect and issued a revisional notice dated 05.10.2016, disallowing the Petitioner's claim of exemption towards Labour charges to an extent of Rs.1,06,96,295/- alleging the same is excessive. The Petitioner, in response to the revisional notice dated 05.10.2016 has filed a detailed reply dated 11.04.2017 wherein, the Petitioner, inter alia, had submitted that notice issued based on the AG audit objection is not fair for the reason that Petitioner has maintained detailed books of accounts for the works contracts done by the Petitioner and same was verified by the enforcement wing officer also and further submit that the objection raised by the Audit party is only an information, which itself cannot be the sole basis, to invoke Section 27 of the TNVAT Act.

3. The learned counsel appearing for the petitioner would submit that the Petitioner having not received any communication from the Respondent till July, 2017 has genuinely believed that the Respondent has accepted the Petitioner's detailed reply dated 11.04.2017 and also belied that the Respondent had dropped the proposals contained in the notice dated 05.10.2017. With the introduction of the GST w.e.f. 01.07.2017, the Petitioner has migrated to the new tax regime and closed its branch/Site office for Tamil Nadu situated at Thirumayam Taluk, Pudukottai - 622507. The Petitioner further states that the Respondent is aware of the fact the petitioner's branch at its jurisdictional limit has closed and moved to Thanjavur, since the Petitioner is allotted a new work at Thanjavur Medical College, Thanjavur Medical College Road, Thanjavur —613004. It is further contended that since there was change in address, the respondent have not served the impugned order, dated 28.08.2017 on the petitioner and simply sent an arrear reminder, captioned as Notice, dated 18.01.2021, to the registered office of the petitioner at Hyderabad.

4. The learned Government Advocate appearing for the respondents would fairly submit that an opportunity of personal hearing is not given to the petitioner and therefore, the matter may be remanded back to the respondent for passing a fresh order.

5. The Court heard the submissions made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

6. The main grievance of the petitioner is that failure to afford an opportunity of hearing to the petitioner, before passing the impugned order, is in violation of principles of natural justice and for the said reason, the impugned order is liable to be quashed. Further, the learned counsel for the respondent also fairly admitted that an opportunity of personal hearing is not given to the petitioner, before passing the impugned order. In such view of the matter, this Court is inclined to set aside the impugned proceedings passed by the respondent, dated 28.08.2017.

7. In the result, the impugned proceedings passed by the respondent in TIN:33584123873/2012-13, dated 28.08.2017, is set aside and the matter is remanded back to the respondent for fresh consideration, after affording an opportunity of hearing to the petitioner. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Commercial Tax Officer (Main),
(Now Designated as “The State Tax Officer”),
Pudukkottai-II Assessment Circle,
Commercial Tax Building,
Behind New Bus Stand,Pudukkottai.

+1 CC to M/s.PRASANNA KUMAR J, Advocate(SR-24692[F]dated 30/07/2021)

W.P(MD)No.10142 of 2021
29.07.2021

RK (09.08.2021) 4P 3C