BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.1488 to 1491 of 2019
and
W.M.P.(MD)Nos.1277 to 1280 of 2019
and
W.M.P.(MD)Nos.2959 to 2962 of 2019

Tvl.Max Properties Pvt Ltd.,
Represented by its Director S.S.Ramakrishna,
Max Plaza, Arunachalam Street,
North Gate, S.S.Colony,
Madurai. ... Petitioner in all W.Ps.

-Vs-

The State Tax Officer,
West Veli Street Assessment Circle,
Madurai. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.1488 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33615023580/2011-12, dated 27.12.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.1489 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33615023580/2012-13, dated 27.12.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.1490 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33615023580/2013-14, dated 27.12.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.1491 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33615023580/2014-15, dated 27.12.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.G.Arjunan
Government Advocate
(in all W.Ps.)

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is a registered company engaged in civil construction activities. It is an assessee registered with the respondent. The writ petitions on hand pertain to the assessment years 2011-12 to 2014-15. The petitioner had filed their returns and the same were also assessed on deemed assessment basis. While so, the place of business of the petitioner was inspected by the Enforcement Wing Officials on 29.07.2015. During surprise inspection, certain discrepancies were noticed. Based on the same, the respondent issued pre-revision notices for the aforesaid assessment years on 28.08.2018. The petitioner submitted their reply on 27.11.2018. After granting personal hearing to the petitioner, the respondent passed the impugned orders dated 27.12.2018 levying tax and penalty on the petitioner. Questioning the same, these writ petitions have been filed.

3.The respondent has filed a common counter affidavit. The learned Government Advocate took me through their contents and wanted me to sustain the impugned orders. It is also pointed out that against the impugned orders, an appeal remedy is available and without exhausting the same, these writ petitions could not have been filed.

4.I carefully considered the rival contentions and went through the materials on record. The primary ground, on which, the impugned proceedings rest, is that the petitioner has not included the purchase value of lifts and there has also been purchase suppression on the part of the assessee.

5.The learned counsel appearing for the petitioner would point out that in respect of the defects pointed out in the pre-revision notices including the two major defects mentioned above, namely non-inclusion of the purchase value of the lifts and purchase suppression, the petitioner has given elaborate explanation. In particular, the petitioner had produced all the relevant bills. The petitioner has also filed Form WW report and also their profit and loss account. Even a cursory look at these materials would show that the petitioner had included the purchase value of the lifts and the other materials in their books of account. In order to satisfy my conscience, I called upon the petitioner to file a type set of papers for atleast one assessment year. Pursuant to the direction given by this Court, the petitioner has filed a type set dated 22.02.2021, in which, the purchase details for the year 2014-15 have been enclosed.

6.I can see there from that the purchase transactions regarding lifts have been duly reflected. A mere reading of the impugned order leads me to the conclusion that the contentions putforth by the petitioner during personal hearing have been summarily brushed aside. For instance, while dealing with the objection regarding purchase suppression, the assessing officer has observed that when the defect was pointed out at the time of surprise inspection, the petitioner had categorically admitted the same. It has been held in more than one decision of the Madras High Court that the assessing officer, being a quasi judicial authority, should not blindly go-by what transpired during the surprise inspection. A learned Judge of this Court in ***Amutha Metals Vs. Commercial Tax Officer, Mannady (East), Assessment Circle, Chennai (2007) 9 VST 478 (Mad)*** held that if the reasoning stated by the Enforcement Officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing Officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. Likewise, the other objections putforth by the petitioner have been disregarded by observing that they are not convincing and acceptable and supportable by any valid records.

7.The petitioner, in the affidavit filed in support of the writ petitions, had categorically asserted that all the documents have been produced before the assessing officer during personal hearing.

8.Since I am of the view that the petitioner's objections have not been considered and since the impugned orders are rather non-speaking and since the assessing officer appear to have been governed by what transpired during surprise inspection by the Enforcement Wing Officials, I am inclined to quash the impugned orders. They are accordingly quashed. These Writ Petitions are allowed. The matter is remitted to the file of the respondents to pass order afresh in accordance with law.

9.When I entertained the writ petitions, I granted interim stay on condition that the petitioner should deposit 10% of the tax demand. The said condition has been complied with. The amount deposited will not however be refunded, merely because, all the writ petitions are allowed. They would abide by the final order to be passed following this remand. In other words, the amount already paid by the petitioner will be adjusted in terms of the order to be passed by the respondent.

10.These Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

rmi

Note :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 State Tax Officer,
West Veli Street Assessment Circle,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-10449[F] dated 11/03/2021)

+1 CC to M/s.SPL GP (SR-10925[F] dated 12/03/2021)

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