BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P.[MD]No.13242 of 2021
and
W.M.P.[MD]No.10235 of 2021

Tvl. Sri Ayyappan Construction,
Rep. by its Partner Mr.M.Ayyappan,
No.24, Mangai Valagam,
Uma Nagar 4th Street,
Medical College Road,
Thanjavur - 613 007. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Thanjavur - II Assessment Circle,
C.T.Buildings,
Sachidananda Mooppanar Road,
Thanjavur. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the respondent in TIN No.33773821662/2015-16 dated 28.06.2021 and quash the same as illegal, arbitrary and also against the provisions of the Act.

For Petitioner : Mr.V.Illanchezian
For Respondent : Mr.R.Suresh Kumar
Government Advocate (Civil Side)

O R D E R
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The prayer sought for herein is for a Writ of Certiorari, to call for the records of the respondent in TIN No.33773821662/2015-16 dated 28.06.2021 and to quash the same.

2.The petitioner is an assessee on the file of the respondent and also was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'the Act']. Insofar as the assessment year 2015-2016 is concerned, the petitioner had filed their monthly returns in Form - I and also filed the Auditor's report in Form-WW under Section 63A of the Act. According to the petitioner, the self assessed return with Form-WW given by the Auditor of the petitioner firm having been considered and accepted by the revenue shall be treated as a deemed assessment as has been made on 31.12.2016.

3.According to the petitioner, as per Form-WW Auditor's report, the total contract value is of Rs.11,86,04,279/- which comprises of the value of goods transferred at 5% and 14.5% and quantified the value at Rs.3,00,16,724/- and Rs.94,03,729/- respectively. It is the further case of the petitioner that the Auditor's report had also indicated a sum of Rs.7,91,83,826/- towards labour and other charges. This audit report has been filed based upon the verification of the books of accounts of the petitioner and the tax dues have also been paid to the Department. While that being the position, the respondent had issued a notice for revision on 22.12.2020, proposing to revise the assessment since according to the respondent, there are omissions on scrutiny of Form-WW.

4.After the notice dated 22.12.2020, the copy of the pre-revision notice was issued on 22.01.2021 and thereafter, on 08.04.2021, a notice / summon for personal hearing was also given to the petitioner, fixing the date of personal hearing on 16.04.2021.

5.In this context, it is the case of the petitioner that since the petitioner had suffered with Diabetic Methints - Acute Cholecystits during the month of January and February 2021 and from which, since it had taken some time to recover as he had been taking rest, he could not respond to the notice of revision of assessment as well as the summon for personal hearing issued on 08.04.2021. Resultantly, on 16.04.2021, during the personal hearing, the petitioner could not appear.

6.At this juncture, the respondent has issued the impugned order confirming the proposal by order dated 28.06.2021, thereby after having taken the aforesaid figures only as has been proposed by the respondent, they have confirmed the order, thereby now they seek for payment of balance tax to the extent of Rs.21,80,127/-. Therefore, challenging the same, the present writ petition has been filed.

7.Heard the learned Counsel for the petitioner who would submit that it is the case of the petitioner that under Section 63A of the Act, Form - WW ie., the auditor's report has been furnished and they have accepted the same. The respondent cannot now reopen it by way of revision and issue notice to the petitioner.

8.Assuming that if the notice is issued, even though the same could not be responded immediately and the petitioner could not attend the personal hearing for medical reasons, the respondent should have verified whatsoever the actual figures given in Form-WW auditor report.

9.The learned Counsel for the petitioner in this regard is able to point out that in paragraph 12 of Form - WW, under the heading First Schedule - Part B, there are two components one is for Rs.3,00,16,724/- which was assessed for tax at 5% rate and another is Rs.94,03,729/- which was assessed for tax at the rate of 14.5%.

10.That apart, a sum of Rs.7,91,83,826/- was also shown as labour charges. When these three components had been made explicitly in Form-WW auditor report and if the same having been verified and if the respondent found any error in this aspect, and in this regard, if they have given a notice stating that the labour charges has been reduced from Rs.7,91,83,826/- to Rs.3,55,81,284/-, reasons must be stated as to on what basis such a drastic reduction has been made. Like that, insofar as First Schedule Part B is concerned, in respect of 14.5% rate of assessment of tax, the amount of Rs.94,03,729/- has been taken into account. However, the amount of Rs.3,00,16,724/- in the very same first schedule Part-B has not been taken into account, for which, no reason has been stated.

11.Since these are all the fundamental issues where the Form-WW Audit Report has not been considered, the same if at all wanted to be rejected or omitted by the assessing authority, reasons must be stated but no such reasons have been stated. Therefore, the said issue can very well be adjudicated by the petitioner at any point of time. Hence, the learned Counsel for the petitioner would submit that the impugned order passed by the respondent assessing authority dated 28.06.2021 is liable to be interfered with.

12.Per contra, Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent would submit that in fact, even though the petitioner based on the Form-WW Auditor report had submitted the self assessed report under Section 63A of the Act, the assessing authority has every right to verify the same and after having verified the same, the respondent has come to the conclusion that there has been enhanced figures stated in the Form-WW audit report. Therefore, they have issued a notice dated 22.12.2020 to the petitioner and a reminder notice was also issued on 22.01.2021. Final reminder was also issued on 22.02.2021. Since, the same also has not been responded by the petitioner, the respondent assessing authority proceeded to give an opportunity of personal hearing to the petitioner, for which, summon was issued on 08.04.2021, fixing the date for personal hearing on 16.04.2021. Even on that day, the petitioner assessee did not appear and therefore, they have no other option and after having gone through the escape of taxable turn over in this regard as has been projected by the petitioner in Form-WW audit report, the assessing authority has come to the right conclusion and issued the final revised order imposing the tax. Therefore, the remaining tax payable has been demanded. Therefore, the learned Counsel for the respondent says that the impugned order is fully justifiable.

13.I have considered the rival submissions made by the learned Counsel appearing for the parties.

14.Though a notice has been given and a reminder has also been given and an opportunity of personal hearing has also been given, none of these opportunities have been availed by the petitioner. In this context, even though it is claimed by the petitioner that the petitioner had been unwell during the relevant period ie., during January and February, 2021, for which, the medical certificate dated 20.07.2021 has been annexed in the typed set of papers, insofar as in the month of March and April, no such certificate has been filed by the petitioner. Therefore, the said medical certificate submitted by the petitioner cannot fully support the case of the petitioner.

15.Be that as it may, turning to the merits of the case, as has been rightly pointed out by the learned Counsel for the petitioner, the petitioner by way of self assessment had assessed the same with the help of the auditor's report in Form-WW under Section 63A of the Act and filed the return which was *prima facie* accepted by the respondent. However, though the power is vested with the assessing authority to revise the same, when such a revision exercise has been made by the assessing authority and in this regard when show cause notice was issued, where certain figures have been shown, the show cause notices does not reflect the two issues namely the figure of Rs.3,00,16,724/- at the rate of 5% tax component as per para B of the Form – WW issued by the audit report has been completely omitted in the show cause notice as well as in the final impugned order. Like that, eventhough the petitioner claims a sum of Rs.7,91,83,826/- as labour charges, the show cause notice proceeded to accept only a sum of Rs.3,55,81,284/- that has been confirmed in the impugned order dated 28.06.2021.

16.As has been rightly pointed out by the learned Counsel for the petitioner, no reason whatsoever has been given as to how the labour charge had been reduced from Rs.7,91,83,826/- to Rs.3,55,81,284/-. Like that the omission of Rs.3,00,16,724/- also has not been reasoned by the respondent in the impugned order. Therefore, these aspects can very well be gone into by the assessing authority, for which the petitioner can make a request to rectify the error as applicable under Section 84 of the Act.

17.In that view of the matter, this Court is inclined to dispose of this writ petition with the following direction:

> "*The impugned order is set aside and the matter is remanded back to the petitioner for reconsideration. While reconsidering the same, the petitioner's representation / request in this regard to be made within two [2] weeks from the date of receipt of a copy of this order to the respondent under Section 84 of the Act shall be taken into effect and after giving an opportunity of hearing and after assessing the documents, if any, a final order shall be passed by the respondent within a period of six [6] weeks*

thereafter."

18.With the above direction, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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 Assistant Commissioner (CT),
Thanjavur - II Assessment Circle,
C.T.Buildings,
Sachidananda Mooppanar Road,
Thanjavur.

+1 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-25146[F] dated 04/08/2021)

+1 CC to M/s.GP (SR-25055[F] dated 03/08/2021)

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02.08.2021

RD(19.08.2021) 5P 4C