BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) Nos.15159, 15161 to 15164 of 2020
and
W.M.P(MD)Nos.12775 to 12777, 12779 and 12780 of 2020

Tvl. Madhucon Projects Limited,
represented by its Manager (F & A),
G.V.L.N.SASTRY ... Petitioner in all W.Ps

Vs.

The State Tax Officer,
Ettayapuram. ... Respondent in all W.Ps

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings passed by the respondent in TIN.No.33841602409/2012-13, TIN.No.33841602409/2013-14, TIN.No.33841602409/2014-15, TIN.No.33841602409/2015-16 and TIN.No.33841602409/2016-17 dated 09.09.2020 and quash the same as illegal, invalid and against the Principles of Natural Justice and further direct the respondent to pass order afresh in a speaking manner after properly verifying the book of accounts of the petitioner and also by properly considering the petitioner's objections and also after affording an opportunity of personal hearing to the petitioner in view of the judicial precedent delivered by the Division Bench of the Honourable Supreme Court of India in case of M/s.GKN Driveshafts (India) Ltd., vs. Income Tax Officer and Others in Appeal (Civil) No.7731 of 2002, dated 25.11.2002 [(2002) 125 Taxman 963(SC)].

(In all W.Ps)
For Petitioner : Mr.K.Srinivasan
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

COMMON ORDER

The Writ Petitions have been filed to quash the proceedings of the respondent in TIN.No.33841602409/2012-13,TIN.No.33841602409/2013-14, TIN.No.33841602409/2014-15, TIN.No.33841602409/2015-16 and

TIN.No.33841602409/2016-17 respectively, dated 09.09.2020 and quash the same as illegal, invalid and against the Principles of Natural Justice and to direct the respondent to pass orders afresh after properly verifying the book of accounts of the petitioner and also by properly considering the petitioner's objections and also after affording an opportunity of personal hearing to the petitioner as per the ratio laid down by the Honourable Supreme Court of India in case of ***M/s.GKN Driveshafts (India) Ltd., vs. Income Tax Officer and Others in Appeal (Civil) No.7731 of 2002, dated 25.11.2002 [(2002) 125 Taxman 963(SC)].***

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

(i) The petitioner is the Manager of a Concern by name Tvl. Madhucon Projects Limited., and they are doing business and executing contract works and they are registered with the respondent in TIN:33841602409 under the Tamil Nadu Value Added Tax Act, 2006 and CST:764868 under the Central Sales Tax Act, 1956 and they are regularly filing the monthly returns. While the matter stood thus, the respondent has passed the deemed assessment orders by accepting the total and taxable turnover reported through returns as required under Section 22(2) of the TNVAT Act and thereafter, in the year 2018, the assessments were revised by the respondent pursuant to the inspection conducted by the Enforcement Wing Officials of the Commercial Taxes Department in the business premises of the petitioner on 22.06.2016 and 23.06.2016. Based on the said inspection, the assessments of the petitioner Concern were revised from the assessment years 2012-13 to 2016-17. Since the said revision orders were passed grossly violating the principles of natural justice by not providing personal hearing, batch of writ petitions were filed before this Court and the assessment orders came to be set aside and the matter was remanded back to the respondent for passing orders afresh by giving opportunity of personal hearing to the petitioner.

(ii) Pursuant to the said order passed by this Court, the respondent has passed the impugned orders, but without properly verifying the accounts and also not properly appreciating the facts and the objections filed by the petitioner, which are all specifically explained at the time of video conferencing arranged by the petitioner on 07.09.2020 and also the material records which are placed through Zimbra mail on 08.09.2020. Hence, these writ petitions.

3. The learned counsel appearing for the petitioners would contend that the respondent without giving an opportunity of personal hearing and also without verifying the records, has passed the non-speaking orders and the same are to be set aside.

4. Per contra, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondent reiterating the averments made in the counter affidavit would contend that as per the circular, which has been issued by the Commissioner of Commercial Taxes, Chennai, personal hearing was given through Video Conference and personal hearing notice was sent to the petitioner on 29.08.2020 and 03.09.2020 and one Mr.Joseph Prabhakar represented the Petitioner Concern through video conference on 07.09.2020 and 08.09.2020 and the petitioner also sent some documents through Zimbra mail, which revealed that they had reiterated and filed the same contentions/records, raised in their objections to the notices already issued to them. Since the petitioner had not filed valid and supportive documents, the respondent has passed the impugned assessment orders dated 09.09.2020 and the said orders have also been duly served on the petitioner.

5. In short, the learned Special Government Pleader would state that the levy of tax and penalty has been imposed within the provisions of the Rules and in accordance with law and hence, there is no illegality or infirmity in the said orders.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials placed before the Court.

7. In view of the submissions made and also after going through the materials placed, this Court is of the view that the respondent has passed the impugned orders, after following the due procedure contemplated under law and after considering the objections raised by the petitioner and also by providing personal hearing to them. Therefore, if at all the petitioner is aggrieved, they have to approach the concerned Appellate Deputy Commissioner and not to approach this Court by way of filing the writ petitions.

8. When the petitioner is having an effective and alternate remedy by filing an appeal before the Appellate Deputy Commissioner, Tirnelveli, filing of the present writ petitions, is totally misconceived and are liable to be dismissed.

9. In the result, the writ petitions are dismissed with liberty to the petitioner to move before the Appellate Deputy Commissioner, Tirunelveli. It is made clear that the period in which the matter was pending before this Court may be excluded for

the purpose of limitation. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PM

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,
Ettayapuram.

Copy to
The Section Officer, ER Section,
Madurai Bench of Madras High Court, Madurai.

(To return the original impugned orders to the Learned Counsel for the Petitioner after getting xerox copy of the same for official records and after getting appropriate acknowledgment from the Learned Counsel for the Petitioner)

+5 CC to Mr.K.SRINIVASAN, Advocate (SR-15676[F] dated 09/04/2021)

+1 CC to SPL GP (SR-16013[F] dated 16/04/2021)

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