BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.10748 to 10750 of 2015
and M.P.(MD)Nos.1. 1 & 1 of 2015

Tvl.V.D.B.Projects (P) Ltd.,
Rep. by its Director Mekapati Abhinav Reddy,
No.55, V.P.Ratinasamy Nadar Road,
Chokkikulam,
Madurai-2. ... Petitioner in all W.Ps.

-Vs-

The Assistant Commissioner (CT),
Chokkikulam Assessment Circle,
Madurai-20. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.10748 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondents in TIN No.33075003313/2011-12, dated 30.04.2015 and quash the same as invalid, illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.10749 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondents in TIN No.33075003313/2012-13, dated 30.04.2015 and quash the same as invalid, illegal and against the principles of natural justice.

Prayer in W.P.(MD)No.10750 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondents in TIN No.33075003313/2013-14, dated 30.04.2015 and quash the same as invalid, illegal and against the principles of natural justice.

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

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner has filed these writ petitions in respect of the assessment years 2011-12, 2012-13 and 2013-14. The petitioner is a civil contractor. Their returns were finalised under Section 22 of TNVAT Act. Subsequently, the Enforcement Wing Officials inspected the petitioner's business premises on 30.01.2014. Certain discrepancies were noticed. Based on the report of the Enforcement Wing Officials, pre-revision notices were issued by the respondent on 05.09.2014 and 06.11.2014 for those assessment years. The petitioner submitted his replies dated 10.10.2014. Ignoring the stand taken by the petitioner, the respondent issued a fresh pre-revision notices dated 19.01.2015. In response thereto, the petitioner gave his reply dated 29.01.2015. There was also a personal hearing. The petitioner attended the same and gave a letter dated 13.02.2015 asking for further time.

3.According to the respondent, such time was granted, but the petitioner appeared again with the relevant records and therefore, the respondent was left with no other option but pass the impugned orders dated 30.04.2015. Challenging the same, these Writ Petitions have been filed. The respondent has filed a counter affidavit in all these writ petitions and the learned Government Advocate took me through their contents.

4.The core argument of the learned Government Advocate is that the petitioner was directed to pay 25% of the tax demanded as a condition for grant of interim order and that the petitioner has failed to comply with the same. Secondly, he would point out that the principles of natural justice as well as the procedure set out in Section 27 of TNVAT Act were scrupulously followed by the assessing authority and that, therefore, no case for interference has been made out. He also would add that the impugned orders are appealable and therefore, for non exhaustion of alternative remedy, these writ petitions deserve to be dismissed.

5.I carefully considered the rival contentions and went through the materials on record. It is true that interim order was granted in favour of the petitioner at the time of admission on condition that the petitioner should deposit 25 % of the tax amount. It is equally true that the petitioner did not comply with the said condition. The question is whether the petitioner can be non suited on that ground.

6.I am of the view that if the petitioner did not comply with the condition, interim order granted in his favour stood vacated and it was open to the authority to have initiated the recovery measures. The respondent does not appear to have done so. In any event, the failure to comply with the condition stipulated, while granting interim order, cannot result in automatic dismissal of the writ petition at the final hearing stage.

7.The petitioner's counsel would point out that the petitioner is primarily engaged in civil contract works in the Public Works Department. He would also state that in response to the show cause notices, the petitioner has given replies. The learned counsel took me through the manner in which, the orders have been passed. Except extracting the objections given by the petitioner, there is virtually no consideration of the petitioner's stand. The respondent has proceeded on the premise that since the petitioner has accepted their omissions before the Enforcement Wing Officials, the issue stood concluded.

8. It has been held time and again that such approach cannot be adopted. 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 respondent, being a quasi judicial authority, will take an independent view of the matter and that he could not go-by what transpired before the Enforcement Wing Officials. That apart, as rightly pointed out by the petitioner's counsel, the consistent stand of the petitioner is that the authority may finalise the issue after verifying the petitioner's account books. In this case, the impugned orders have been passed without verifying the petitioner's account books. The assessing officer has adopted 70:30 formula set out in Rule 8(5) of TNVAT Rules. The said formula can be invoked, when the account books are not available and if it is not possible to ascertain the labour charges and other charges not involving any transfer of property in goods. In the case on hand, when the account books are very much available, the authority ought to have directed their production and only if it was not possible to ascertain the element mentioned above, the formula could have been applied.

9.Since the authority has straight away invoked the said formula without undertaking the exercise of ascertainment, the orders impugned in these writ petitions are liable to be quashed. These Writ Petitions are allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. Consequently, connected miscellaneous petitions are closed.

10.Even before commencing his arguments, the petitioner's counsel submitted that the petitioner would remit 5% of the tax demanded on or before 26.03.2021. This undertaking given by the petitioner's counsel, on instructions, is recorded.

11.Even though I have quashed the impugned orders in these writ petitions for the reasons set out above, if the petitioner fails to adhere to the undertaking now given before this Court, the order now passed would stand automatically recalled and the writ petitions would be dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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),
Chokkikulam Assessment Circle,
Madurai-20.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-9764[F] dated 10/03/2021)

+1 CC to M/s.SPL GP (SR-10151[F] dated 10/03/2021)

W.P.(MD)Nos.10748 to 10750 of 2015
and
M.P.(MD)Nos.1. 1 & 1 of 2015
09.03.2021

TP(CO)
TR(25.03.2021) 4P 4C