IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 175 of 2022
and
CMP. No.1234 of 2022

M/s.R.P.S. & Co
No.3, Mosuvana Lane, SKC Road
Erode - 638 001
Represented by its Partner, R.Venkatesh
..Appellant/Petitioner

Versus

The Assistant Commissioner (ST)(FAC)
Brough Road Circle, Erode
..Respondent/Respondent

Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal and set aside the order passed in W.P. No. 25435 of 2021 dated 06.12.2021.

Prayer in W.P. 25435/2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned Assessment order for the year 2014-2015 bearing Ref. No. 33683004050/2014-2015 dated 28.09.2021 and quash the same.

For Appellant	:	Mr. Adithya Reddy
For Respondent	:	Mr. V.Prashanth Kiran Government Advocate (Taxes)

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Aggrieved by the order dated 06.12.2021 passed by the learned Judge in W.P.No.25435 of 2021, the writ petitioner / assessee has come up with this intra court appeal.

2. For the sake of brevity, the operative portion of the order impugned herein, is extracted below:

> "8. Since the dispute would require reconsideration by the respondent, this court is of the view that the impugned order can be set aside and the case be remitted back to the respondent for fresh consideration subject to terms. Under these circumstances, the impugned order is quashed subject to the petitioner remitting the amount equivalent to 30% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order.
>
> 9. On such amount being remitted by the petitioner, the respondent shall proceed to pass appropriate orders on merits and in accordance with law within a period of thirty days from the date of receipt of a copy of this order.
>
> 10.In case the petitioner fails to remit the aforesaid amount or to givea reply to the show cause notices dated 18.04.2018 and 23.08.2021, the respondent shall pass appropriate orders after reiterating the content of the impugned order.
>
> 11.This writ petition stands allowed with the above observations. No costs.Consequently, connected writ miscellaneous petition is closed."

3.The case of the appellant is that they are a works contractor engaged in the business of civil construction. For the assessment year 2014-15, they were issued with a show cause notice dated 18.04.2018 proposing to revise the assessment under section 27(1) of the TNVAT Act, 2006, on the ground that there is mismatch between the value of works contract amounting to Rs.8,22,23,104/- furnished in Form S and the monthly returns filed in Form 1. During the personal hearing, the representative of the appellant appeared and explained that the contract value declared in Form S is only an estimate and the contract was executed for three years and therefore, the actual turnover declared in the monthly returns in Form 1 should only be construed as the turnover for the year 2014-15. The said explanation was accepted, but no order was passed by the respondent to that effect. While so, due to a change of incumbent of the office of the respondent, the appellant was issued with another show cause notice dated 23.08.2021, calling upon them to produce all the relevant documents, within a period of ten days. In the mean while, one of the partners of the appellant viz., S.Rajasekar, who was managing the affairs and bank accounts, as per clause 7 of the Partnership Deed dated 02.01.2012 passed away on 26.08.2021, due to which, reply to the show cause notice could not be filed by the appellant. On 28.09.2021, the respondent passed the assessment order, confirming the proposal made in the show cause notice and demanded a tax of Rs.50,60,943/- along with interest. Challenging the same, the appellant preferred WP.No.25435 of 2021, which was allowed by the learned Judge, in the terms as extracted above. Feeling aggrieved, the appellant is before this court.

4.According to the learned counsel for the appellant, the respondent without providing reasonable opportunity of being heard to the appellant, passed the assessment order dated 28.09.2021, which is arbitrary, illegal and in violation of the principles of natural justice. The learned counsel further submitted that when the assessment order suffers from patent illegality and is liable to be quashed, the question of pre-deposit by the assessee does not arise. It is also submitted that the appellant already paid the entire tax due for the works contract during the relevant assessment year. Therefore, the order passed by the Learned Judge, directing the appellant to deposit 30% of the disputed tax as a condition precedent, is unwarranted.

5.Per contra, the learned Government Advocate (Taxes) appearing for the respondent submitted that the petitioner did not file their reply to the show cause notices dated 18.04.2018 and 23.08.2021 and hence, the respondent rightly passed the assessment order, confirming the proposal made in the show cause notices. However, considering the mitigating circumstances pointed out by the appellant, the learned Judge set aside the assessment order and remanded the matter to the respondent for fresh consideration, but, in the interest of revenue, directed the appellant to pay 30% of the disputed tax and therefore, the order impugned herein does not call for any interference at the hands of this court.

6.Heard both sides and perused the records placed before this court.

7.The main grievance of the appellant is that when the assessment order is unsustainable and quashed for want of reconsideration, the learned Judge ought not to have directed the appellant to deposit 30% of the disputed tax due as a condition precedent for the same. It is also pointed out that the appellant has already paid the tax for the works contract during the relevant assessment year. On the other hand, it is the stand of the respondent that to protect the interest of the Revenue, the learned Judge imposed such a condition for quashing the assessment order.

8.This court is of the view that the issue involved herein is no longer res integra. A Division Bench of this court in Havea Handles & Components Pvt. Ltd v. the Assistant Commissioner (CT) (FAC), Royapettah II Assessment Circle, Chennai, by judgment dated 04.07.2014 in WA Nos.867 to 869 of 2014, considered the similar issue and held as under:

> "6.It has to be pointed out, at this stage, that,once it has been found that the orders impugned in the writ petitions are unsustainable on account of violation of principles of natural justice, it is wholly unnecessary to impose any condition while remitting the matter for fresh adjudication and in the considered opinion of this court, the direction given to the appellant / writ petitioner to deposit 10% of the tax amount as claimed in the demand notice, as a condition precedent to enquire into the matter, is unsustainable and the said portion of the order is liable to be set aside."

9.In the light of the aforesaid judgment and having regard to the admitted fact that the learned Judge set aside the assessment order and remanded the matter to the respondent for fresh consideration, this court is of the opinion that the pre-condition imposed on the appellant to deposit 30% of the tax amount for consideration of the matter afresh by the respondent, is certainly unwarranted and hence, the same is deleted. Consequently, the appellant shall file their reply to the show cause notices dated 18.04.2018 and 23.08.2021, within a period of two weeks from the date of receipt of a copy of this judgment. Thereafter, the respondent shall consider the matter afresh and pass appropriate orders, after providing an opportunity of personal hearing to the appellant, within a period of 30 days.

10.Accordingly, the order dated 06.12.2021 passed by the learned Judge in WP.No.25435 of 2021, is modified and the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

dhk
To

The Assistant Commissioner (ST)(FAC)
Brough Road Circle, Erode

+1 CC to Mr. Adithya Reddy, Advocate sr 7909
+1 CC to The Special Government Pleader (T) sr 7802.

WA No. 175 of 2022

AKII(CO)
SP(23/02/2022)