BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.14983 and 14984 of 2017
and
W.M.P.(MD).Nos.11807 and 11808 of 2017

Tvl.Dilip Buildcon Limited,
Rep. by Modugula Satish Kumar Reddy,
No.148/2, Base Camp,
Kallal Road, Madagupatti,
Sivagangai District. ... Petitioner in both W.Ps.,

Vs.

The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai. ... Respondent in both W.Ps.,

COMMON PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the file of the respondent in TIN:33326257143/2014-15 & 2015-16 dated 23.06.2017 and quash the same.

For Petitioner	:	Mr.A.Chandra Sekaran
For Respondent	:	Mr.M.Prakash Additional Government Pleader

COMMON ORDER

These two writ petitions are filed challenging the orders of assessment for the Assessment Years 2014-15 and 2015-16 dated 23.06.2017 under the TNVAT Act.

2. It is submitted that the petitioner is a registered dealer on the file of the respondent under Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as 'TNVAT Act'). The petitioner reported a total and taxable turnover of Rs.15.98 Crores and Rs.6.73 Crores for the Assessment Year 2014-15 and Rs.150.83 Crores and Rs.47.72 Crores for the Assessment Year 2015-16 and paid the tax due thereon. It is submitted that in terms of Sec.22(2) of the TNVAT Act, the petitioner were deemed to be assessed on the basis of their returns. The petitioner is engaged in the execution of various works contract including contracts for construction, improvement and augmentation of Roads. The petitioner was awarded contracts by the National Highways Authority of India on EPC basis. For the purpose of executing the works, the petitioner had purchased cement, iron, pipes etc., from registered dealers on payment of appropriate taxes under the TNVAT Act. The petitioner has its own crusher unit wherein boulders are converted

into blue metal jelly. The petitioner had maintained its books of accounts capturing the purchase and transfer of goods in the execution of the works contract and also labour and service charges incurred in the execution of the contract.

3. It is submitted that the petitioner's place of business was inspected by the Officers of Enforcement Wing on 05.10.2015 and 06.10.2015. During the course of the inspection a number of defects were allegedly found by the Enforcement Officials and certain sums were collected allegedly towards tax liability which is impermissible. Pursuant to the above inspection a pre-revision notice dated 29.08.2016 was issued proposing to re-determine the petitioners total and taxable turn over of Rs.28.42 Crores. The petitioner submitted his objection to the above notice. I do not intend to refer to the contents of the said notice or the reply as a revised notice was issued wherein fresh issues were raised which formed the basis for the impugned orders of assessment.

4. It is submitted that the respondents issued a revised notice dated 30.01.2017 *inter-alia* proposing the following:

a) The petitioner had entered into two lease agreements for excavation of stone boulders from the quarry. The petitioner was permitted to excavated stone boulders from the above two quarries and was under an obligation to pay Rs.18/- for every tonne of boulder excavate. The boulders so excavated was converted into blue metal jelly at the petitioner's crusher unit and used in the execution of works contract. The notice proposed to levy purchase tax on a sum of Rs.2.97 Crores for the Assessment Year 2014-15 and Rs.15.02 Crores for the Assessment Year 2015-16 under Section 12 of TNVAT Act, 2006, representing the value of blue metal and dust so produced and used in the execution of works contract.

b) There was mismatch of Annexure-II of the seller and Annexure – I of the petitioner as was evident from the MIS Web Report. On the basis of the same, excess claim of Input Tax Credit was proposed to be reversed under Sec.19(16) of the TNVAT Act.

c) On the basis of alleged verification of Departmental website with check post movement register, it was noticed that the petitioner had sold goods to other States which was valued at Rs.8.29 Crores. Similarly, it was also noticed on the basis of alleged verification of Departmental website that there was movement of capital goods from outside the State. Since the above transactions were not supported with corresponding sales / purchase invoices nor reflected in Annexure-I, the same was proposed to be treated as sales suppression based on purchase permission.

d) The petitioner's claim of Input Tax Credit to the extent of Rs. 4,34,808/- for the Assessment Year 2014-15 and Rs.57,222/- for the Assessment Year 2015-16 was found to be beyond the period stipulated under Sec.19(11) of the TNVAT Act.

e) That the claim of deduction towards labour charges from the value of the works contract was found to be very high / excessive in comparison with the value of the goods involved in the execution of works contract and hence, the respondent proposed to invoke Rule 8 (5)(d) of the TNVAT Act and granted deduction towards labour and service charges at 30% of the contract value of Rs.15.96 Crores for the Assessment Year 2014-15 and Rs. 42.45 Crores for the Assessment Year 2015-16. The remaining portion of the contract value was treated as representing value of goods used in the execution of works contract and liable to tax.

f) Sale of asset to the extent of Rs.29,611/- for the Assessment Year 2014-15 was allegedly not ascertainable on perusal of Profit & Loss Account and hence it was proposed to levy tax on the value of sale of asset estimated at Rs.10,00,000/-

5. The petitioner in response to the above proposal / notice submitted his objections dated 20.03.2017 *inter-alia* highlighting / stating the following:

a) That the proposals were made without even verifying books of accounts and the proposals are made on the basis of mere assumptions.

b) That the levy of tax on blue metal cannot be justified as there was no purchase of blue metal by the petitioner to levy purchase tax under Section 12 of the TNVAT Act.

c) With regard to sand bricks purchased from unregistered dealers, it was submitted that the same was used in the execution of works contract which is deemed to be a sale, thus, the question of levy of purchase tax would not arise.

d) That the contract with National Highways Authority of India was for laying four-way track which involves extensive labour activities like levelling the road, removal of encroachments, sand filling etc., The adoption of the statutory formula while granting deduction towards labour and services on the premise that there was allegedly excessive claim of deduction towards labour and services is clearly unjustifiable, inasmuch as the petitioner requested the respondent to call for books of accounts and conduct an enquiry after providing a personal hearing before making the assessment. The petitioner also undertook to produce books of accounts and other details which may be verified before completing the assessment. That adoption of the statutory formula without even verifying the books of accounts which the petitioner submitted they would produce as and when called for is contrary to Rule 8(5)(d) of the TNVAT Rules, which provides that the statutory formula for deduction towards labour and other like charges applies only if the assessing officer is unable to ascertain the same from the books of accounts maintained and produced by a dealer before the Assessing Authority. Thus the adoption of the statutory formula without even examining the books of accounts and other documents only on the basis that the petitioner had according to the respondent claimed excessive deduction towards labour and other like charges is unjustified.

e) That the revision is based on Intranet Web Report wherein discrepancies were noticed between the sellers and purchasers return and that the returns filed by the petitioner and that the proposal is based on the MIS Match Report cannot be sustained. A request for cross-examination of the other end dealers was also sought for. The petitioner enclosed amongst other the following documents:

i) Purchase bill copies,

ii) Ledger copies

iii) Bank statement.

It may be relevant to extract the following portions of the objection of the petitioner wherein request was made to call for and examine the books of accounts before the assessment is completed.

> *"Thus as per the principles stated in the above judicial precedents, we once again request you to call for our accounts, conduct an enquiry after providing an opportunity of personally being heard in person."*.....
>
> ....*"Such type of estimation is not tenable, since because you yourself had not verified our accounts till now as we stated earlier. We maintained elaborate accounts and documents which are properly certified by our internal Auditors and Chartered Accountant. If you go through out accounts there would not be such allegation. Further the entire assessment was made without any nexus to our transaction. You have made best judgment to your own whims and fancies."* ....

> *........"Further we kindly request you to issue summons to our sellers, get the necessary details from them and permit us to cross examine them as per section 81 and 82 of the TNVAT Act. If necessary conduct an enquiry and we undertake to produce our account books and details which may be verified before coming to any conclusion.".....*

6. The respondents had however rejected the objection and confirmed the proposal by finding the following:

a) That purchase tax is leviable in circumstances in which no tax is payable in this State on the sale since the blue metal had changed into some other form (Road) and had not suffered taxes, purchase tax under Section 12 would then get attracted.

b) That the levy of purchase tax on sand and bricks even though the same has been used in the execution of work contract would still attract purchase tax under Section 12 inasmuch as purchase tax is levied on the purchase value of materials while sales tax is levied on the deemed sale value of materials after adding G.P., and they attract different charging sections.

c) The proposal to adopt the statutory formula was confirmed on finding that the claim of deduction towards labour charges is excessive. The adoption of the statutory formula towards deduction of labour and other like charges from the contract value was justified by stating that the sale value of materials used in the execution of works contract works out to 25% which is very low and not commensurate with the total contract value.

d) Input Tax Credit was denied in view of the discrepancy between Annexures - I and II of the return filed by the sellers and purchasers with that of the returns / along with Annexures filed by the petitioner.

e) The assessment order also levied taxes on hollow blocks on the premise that purchase of hollow block was not supported by tax invoices.

f) The sale of asset estimated at Rs.10,00,000/- was confirmed on the basis that no supportive documents were furnished.

7. The present writ petition is filed challenging the above order of assessment *inter-alia* on the ground that the assessments have been made without considering the objections as would be evident from the following:

a) The statutory formula towards labour and other like charges of 70:30 of the contract value has been adopted without even examining the books of accounts which is contrary to Rule 8(5)(d) which provides for adoption of the statutory formula only if the value of labour and other like charges cannot be ascertained from the books of accounts. The order of assessment stands vitiated as the respondent has despite repeated request made by the petitioner to examine the books of accounts failed to do so before adopting the statutory formula.

b) The levy of purchase tax without even considering the petitioners submission that there was no purchase of blue metal by the petitioner in the first place for there to be a levy of purchase tax on jelly which was obtained by converting boulders into jelly at the petitioner own crusher unit. In the absence of dealing with the above jurisdictional aspect and rendering a finding thereon the impugned order stands vitiated.

c) The levy of purchase tax is also unjustified inasmuch as the petitioner has used the sand and bricks purchased in the execution of works contract which is a deemed sale and thus levy of purchase tax was unwarranted.

d) That the mismatch of Annexure-II of seller and Annexure-I of purchaser and that of the petitioner's return along with Annexures ought to be determined on the basis of Circular No.3/2019 in Q1/39643/2018 dated 18.01.2019, issued pursuant to the order of this Court in ***JKM Graphics*** reported in ***(2017) 99 VST 343***.

e) That the levy of purchase tax on hollow block in the impugned order without even a proposal in the notice suffers from violation of principles of natural justice.

8. This Count finds that there is merit in the submissions of the learned counsel for the petitioner. In response, the respondent faced with the above infirmities which the impugned order suffers from, submitted that they may be granted the liberty to redo the assessment.

9. In view of the same the impugned orders are set aside and the petitioners are permitted to appear before the respondent within a period of four weeks from the date of receipt of a copy of this order along with the objections and books of accounts and other documentary evidence if any. The respondent would thereafter consider the same and after granting the petitioners a reasonable opportunity of hearing would proceed to complete the assessment within a period of four months from the date of receipt of a copy of this order.

10. The writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

30.11.2022

Index: Yes/No
Speaking order/Non-speaking order
ssn

MOHAMMED SHAFFIQ, J.,

ssn

To

The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Sivagangai.

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