BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.21743 of 2023
and
W.M.P.(MD).No.18142 of 2023

Tvl. Subash Engineers & Contractors,
Represented by its Proprietor:V.Suresh,
A.V.M.Farm, Perumal kovil valasu,
Thirumala goundan valasu,
Kallimandayam, Oddanchatram Tk,
Dindigul Dt. ... Petitioner

vs.

The Assistant Commissioner (ST),
Palani – II Assessment Circle. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Na.Ka.No.167/2018/A3 dated 23.02.2023 and quash the same as illegal and against the Principles of Natural Justice and further direct the respondent to consider the petitioner's representation dated 02.03.2023 and re do the assessment of the petitioner for the assessment year 2014-15 as directed by this Court in W.P.(MD)No.4193 of 2018 and W.M.P(MD)No.4341 of 2018 dated 20.03.2018 after granting an opportunity to the petitioner to put forth their objections and after affording an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.A.Chandra Sekaran

For Respondent : Mr.A.K.Manikkam,
Special Government Pleader

ORDER

This Writ petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order, dated 23.02.2023 and direct the respondents to consider the petitioner's representation, dated 02.03.2023 and re do the assessment for the assessment year 2014-15.

2. The petitioner is carrying on Works Contract and an assessee under TNVAT Act. For the assessment year 2014-2015, the petitioner had filed monthly returns. However, the petitioner has not responded to the pre revision notices and had suffered an order dated 31.10.2017. Aggrieved over, the petitioner had filed W.P.(MD)No.4193 of 2018, to quash the assessment proceedings, dated 31.10.2017 and directed the respondent to afford an opportunity. This Court after considering the claim of the petitioner, vide order, dated 20.03.2018, directed the petitioner to remit 10% of the tax without prejudice to his contention on or before 31.03.2018. However, the petitioner did not comply with the order. Now, the respondent has proceeded further and has issued the impugned attachment notice, dated 23.02.2023. Hence, the petitioner is before this Court.

3. The petitioner submitted that after negotiations with the respondent, the petitioner has paid Rs. 2,43,558/- on 16.06.2022 for tax including interest. Moreover, the respondent had retained huge amount of TDS credit to the tune of Rs.2,14,923/-. If the payment and the credit is taken into account, the respondent is having nearly Rs.4,58,481/-, which is more than 10% as stated in the earlier Writ Petition. Hence prayed to direct the respondent to re-do the assessment.

4. The learned Special Government Pleader appearing for the respondent vehemently opposed allowing the Writ Petition at the Admission stage itself and sought time to file counter affidavit. However, this Court is of the considered opinion that since this court is inclined to remit back to the respondent, counter affidavit is not necessary. Moreover, there is no loss to the respondent since the petitioner had already paid Rs. 2,43,558/- on 16.06.2022 and the respondent has retained the TDS amount to the tune of Rs.2,14,923/- and if these two amounts are taken the petitioner has paid Rs.4,58,481/-, which is more than 10%.

5. Therefore the respondent is directed to re do the assessment as directed in the earlier order passed in W.P.(MD)No.4193 of 2018. The assessment order is kept in abeyance and the impugned order is quashed.

6. With these observations and directions, this Writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

Index : Yes / No
Internet : Yes
NCC : Yes / No
Sml/Tmg

To
The Assitant Commissioner (ST),
Palani – II Assessment Circle.

S.SRIMATHY, J

Sml/Tmg

W.P.(MD)No.21743 of 2023

08.09.2023