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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD) No.25760 of 2024

Tvl. V M & Co., ... Petitioner
rep. by its Partner M.Parthasarathi.

-vs-

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the impugned assessment order on the file of respondent vide GSTIN 33AAIFV9271C1Z3/2017-18, dated 12.07.2024, quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2019-2020.

For Petitioner : Mr.Raja. Karthikeyan

For Respondents : Mr.J.K.Jayaselan,
Govt. Advocate.

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ORDER

This Writ Petition has been filed, challenging the order, dated 12.07.2024, passed by the respondent, on the premise that the same has been made in violation of principles of natural justice, non-application of mind to the material on record, and also that is a non-speaking order.

2. The petitioner is engaged in execution of works contract. It is submitted that some of the works have been executed during the VAT regime and are stated to be subject to tax under the GST Act. Detailed replies have been filed by the petitioner in response to Form GST-DRC01A, dated 02.04.2024, whereby it was explained that the proposal to treat a sum of Rs. 42.86 crores as suppression was contrary to the facts inasmuch as out of the total receipts for the year 2017-2018 of Rs.48.10 crores, Rs.44.96 crores have been disclosed under the VAT regime and the sums received in respect of the works executed under the GST regime were only to the extent of Rs.3.35 crores and in respect of the above consideration, taxes have also been duly discharged under the GST. It may be relevant to record the following reply of the petitioner :

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Received your above referred notice and noted the contents therein, for which we already submitted our detailed objections, which may kindly be considered, besides the following additional submission:

At the outset we state that we are doing Works Contract. Our entire outward and inward supply transactions are covered by valid Tax Invoices and the same is duly accounted for in our accounts and also reported to the department and claimed Input Tax Credit in time (hereinafter referred to as 'ITC') and also as required u/s 16 of the Tamil Nadu Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'TNGST/CGST Act, 2017') and paid the corresponding tax after adjusting the eligible ITC through our returns then and there as required under the TNGST/CGST Act, 2017.

We state that your goodselves has proposed to arrive the alleged difference in sales turnover to a tune of Rs.42,86,77,702/- noticed between GSTR-9C and VAT returns and in this regard we are submitting the following explanations with relevant material records.

It is most pertinent to note here that on 05.07.2023 our business premises was inspected by the Intelligence Wing Officials of the Commercial Taxes department and on 07.07.2023 the Intelligence Wring Official recorded a statement and at that time itself, we deposed that there exists no such difference in sales turnover and we herewith reproduce the same for your ready reference:

Details	Turnover
Turnover as per Profit and Loss account for the year 17-18 as contract receipts	481016693
Add: Stock transfer to out going partners as per Profit and Loss Account and reported in GSTR 3B	2214607
ADD: Minibus income reported in Profit and Loss account	4080676
Total	487311976
Less: VAT Contract Receipts included in P&L	449680070
Balance	37631906
Less: VAT Minibus Income	816315
Balance	36815591
Less: GST Minibus income exempted not reported in GSTR 3B	3264361
Net GSTR 3B figure (Contract receipts + Stock transfer to partner) [Rs. 31336623 + Rs. 2214607]	33551230

Thus the VAT contract receipt is Rs.44,96,80,070/- and and not as stated in your notice and we herewith attached all the connected material records for your kind consideration. Furthermore, we paid tax on the stock transferred to outgoing partners to a tune of Rs.22,14,607/- during August2017 and December-2017 through GSTR-3B along with the contract receipt turnover. Moreover, as advised by the Central department, we also paid differential rate of tax for the period from 01.07.2017 to 21.09.2017 through DRC-03 and the same was accepted and all further proceedings are dropped vide F.No.DGGI/INT/INTL/542/2022-Gr-E/1780, dated 08.12.2022.

Thus as per the above tabulation, we have correctly reported a sum of Rs.3,35,51,230/- through GSTR-3B and paid the relevant tax due to the

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department then and there and we reported the turnover as per GSTR-9C to a tune of Rs.48,73,11,976/- (details are as stated above), which is inclusive of exempted Mini-bus income, VAT contract receipt, Stock transferred to outgoing partners.

We herewith attached all the connected material documents for your kind consideration which may kindly be considered and if it is consider, there could be no such alleged difference.

Thus your entire proposal is liable to be withdrawn along with its consequential levy of interest and penalty proposed.

In fine we kindly request your goodselves to consider all the above facts and the judicial precedents, accept our contentions and thereby your entire proposal may kindly be dropped at once. OTHERWISE, your goodselves being a quasi-judicial authority, in the interest of justice may be pleased to grant us an opportunity of personal hearing to explain the above facts in an effective manner with the assistance of our Tax Consultant and till then your proposal above referred may kindly be deferred.

3. It is submitted that if the Assessing Officer had taken into account the reply and also the details which were furnished along with the reply, it would have been evident that the proposals were grossly erroneous. Instead, the Assessing Officer proceeded to reject the reply/contention of the appellant, by merely stating that the reply was not convincing. The relevant portion of the impugned order is extracted hereunder :

> *"The reply is not convincing and is not acceptable since they are not supported with valid documentary evidences. Hence, they are overruled since they are not having any valid records for production before the Assessing Officer for verification."*

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It is thus submitted that the impugned order is non-speaking.

4. It is trite law that when any quasi-judicial order, which results in adverse consequences, must be made in compliance with the principles of natural justice. Reasoning is the heart-beat of every conclusion, absence of reason would vitiate the proceedings.

5. In the case on hand, the impugned order does not reflect any reasoning. What is stated therein is that the reply is not acceptable and documents are not filed. The Assessing Officer has not dealt with the objections of the petitioner at all.

6. In view thereof, this Court is of the view that the impugned order suffers from the vice of being a non-speaking order and thus violates principles of natural justice.

7. At this juncture, learned counsel for the respondent would submit that the respondent may be given liberty to re-do the assessment, after granting the petitioner another opportunity.

8. Accordingly, the impugned order is set aside. It is open for the respondent to proceed with the matter in accordance with law. It is also open for the petitioner to treat the Assessment Order as Show Cause Notice and submit their objections within a period of two weeks from the date of receipt of

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this order and, thereafter, appropriate orders will be passed by the respondent in accordance with law, after affording the petitioner an opportunity of hearing. It is also open for the petitioner to raise all objections, that may be available to them, before the authority.

9. Writ Petition is allowed accordingly. No costs. Consequently, the connected W.M.P.(MD) No.21824 of 2024 is closed.

25.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

dixit

To:

The State Tax Officer,
Ramanathapuram Assessment Circle,
Ramanathapuram.

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MOHAMMED SHAFFIQ, J.

dixit

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