(2015) 04 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 9522 of 2015 and M.P. No.1 of 2015

Deva Construction Contractors Pvt. Ltd. APPELLANT

Vs

The Commercial Tax Officer and Others RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:
Central Sales Tax Act, 1956 — Section 3

Citation : (2015) 04 MAD CK 0144

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : V. Sundareswaran, for the Appellant; Kanmani Annamalai, Additional Government Pleader, Advocates for the Respondent

Judgement

S. Vaidyanathan, J.

1. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) who took notice for the respondents and with their consent, these Writ Petition is taken up for hearing at the stage of admission itself.

2. The petitioner has come forward with this writ petition, challenging the order of the 1st respondent dated 10.11.2014.

3. According to the learned counsel for the petitioner, the petitioner filed periodical monthly returns for the assessment year 2012- 2013 and the admitted tax was paid along with the returns. However, the 2nd respondent issued notice dated 08.05.2014 under Section 27 of the Act and also notice dated 20.06.2014, proposing to reverse the Input Tax Credit on purchases from registered dealers whose registration certificates were cancelled and also on purchasers made from the dealers remitting tax under compounded scheme. Further, they have also proposed to make an addition at 20% towards non filing of form WW.

4. According to the learned counsel for the petitioner, Section 63A was inserted by Act 18 of 2012 mandating production of audited accounts. Sub Section 2 of

Section 63A empowers the officer to accept form WW filed belatedly on imposing discretionary penalty of maximum of a sum of Rs.10,000/- and there is no provision under Section 63Ato make addition for belated filing of form WW.

5. For the sake of convenience, Section 63-A of the Tamil Nadu Value Added Tax, 2006 is extracted below:-

"Section 63-A. Accounts to be audited in certain cases:-

(i) Every registered dealer whose total turnover including zero rate sale and sale in the course of inter-State trade or commerce as specified in section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the Assessing authority, within such period as may be prescribed.

(2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the Assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of sum of rupees ten thousand, in addition to any tax payable, in respect of the said period:

Provided that, this section shall not apply to the departments of Central and State Governments, local authorities, the railway administration as defined under the Railways Act, 1989 (Central Act 24 of 1989), the Tamil Nadu State Road Transport Corporations and similar such registered dealers, as may be notified by the Government".

6. Further, according to the learned counsel for the petitioner, confirming the proposals, the impugned order dated 10.11.2014 has been passed and the same has been despatched on 05.12.2014. That apart, according to the learned counsel for the petitioner, prior to despatching of the impugned order by the department, the petitioner made a request on 26.11.2014, requesting the authorities to grant time to submit Form WW. However, without any reference to the representation, which was acknowledged, the impugned order has been despatched.

7. Besides, according to the learned counsel, the petitioner was not aware of the impugned order dated 10.11.2014, when he made a request on 26.11.2014 to the authorities. However, it is submitted that the petitioner has paid the penalty amount. However, he was not given an opportunity before the impugned order was passed.

8. According to the learned counsel for the petitioner, in terms of Section 27(3) of the Act, penalty can be imposed for wilful suppression and there is no finding to that effect as far as the petitioner is concerned.

9. The fact that no opportunity was given to the petitioner has not been disputed

by the learned Additional Government Pleader (Taxes).

10. Since I find much force in the contention of the learned counsel for the petitioner, I am inclined to set aside the impugned order and remit the matter back to the authority concerned for passing orders afresh.

11. In view of the same, the writ petition is allowed. The impugned order dated 10.11.2014 is set aside and the matter is remitted back to the authority concerned to consider the case of the petitioner afresh and to pass appropriate orders on merits and in accordance with law.

12. It is made clear that the petitioner shall appear before the authority concerned on or before 29.05.2015 on any working day, after intimating the same to the authority concerned. On such appearance of the petitioner, the respondent concerned shall pass appropriate orders afresh on merits and in accordance with law, after proving an opportunity of hearing to the petitioner, within a period of fifteen days thereafter.

No costs. Connected miscellaneous petition is closed.