(2015) 12 TP CK 0028

In the Tripura High Court

Case No : W.P. (C) 110 of 2014

Power Mech Projects Limited — APPELLANT

Vs

The State of Tripura and Others — RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Tripura Value Added Tax Act, 2004 — Section 4, 5

Citation : (2016) 88 VST 181

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : B.P. Todi, Sr. Advocate and Ankit Todi, Advocate, for the Appellant; D.C. Nath, Advocate, for the Respondent

Judgement

Deepak Gupta, C.J.

1. By means of this writ petition, the petitioner has challenged the assessment order dated 24th February, 2014 whereby, the Assessing Officer has held that the returns filed by the assessee are incorrect and incomplete and has further held that the assessee is liable to pay additional tax of Rs. 14,62,342.04 plus interest of Rs. 7,67,729.57 and penalty @ 150% amounted to Rs. 21,93,513.06 i.e. to say a total amount of Rs. 44,23,585.00 for the assessment year 2010-11. For the assessment year 2011-12, the balance due is Rs. 1,69,12,462.38, interest Rs. 58,34,799.52 and penalty Rs. 2,53,68,693.57, total amount is Rs. 4,81,15,955.00. Similarly, for the year 2012-13, the balance due is found to be Rs. 2,44,01,139.43, interest Rs. 40,26,188.00, penalty Rs. 3,66,01,709.14 and balance due Rs. 6,50,29,037.00.

2. The main grievance of learned counsel for the petitioner is that the rules of natural justice have not been followed while deciding the same case. We are aware that normally, we do not interfere at the stage of assessment but if patently there is violation of the rules of natural justice then this Court will have to interfere.

3. It would be pertinent to mention that earlier also the petitioner had filed W.P. (C) No. 91 of 2012 in this Court which had been disposed of by this Court in the following terms:--

"2. There is no manner of doubt that the contract which the petitioner has entered into with the respondent is a works contract and, therefore, tax has to be paid only on the taxable turnover as determined in terms of Sections 4 and 5 of the Tripura Value Added Tax and not on the gross turnover. Therefore, the order is bound to be quashed. We accordingly quash the order and further direct that the assessing officer shall make assessment of the tax, if any, payable by the petitioner on the value of the property in goods which has been transferred during the execution of the works contract in question.

3. We may make it clear that this assessment has to be made in the light of the observations made by the Apex Court in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, and by this Court in Biplab Kr. Ghosh v. Union of India, [WP(C) 73 OF 2013]. We further direct that the petitioner should cooperate with the Assessing Officer and the assessment should be completed latest by 28th February, 2014. In case any amount is found refundable to the petitioner the same shall be refunded alongwith interest as payable under the provisions of the Tripura Value Added Tax on or before 30th April, 2013. We may also make it clear that we expect both the petitioner and the Assessing Officer to obey this order in letter and spirit and work in cooperation with each other and in case we find that either the petitioner or the Assessing Officer is trying to delay the matter we shall be compelled to take serious action against the erring party. The petitioner is directed to appear before the Assessing Authority alongwith a copy of this judgment on 10th December, 2013."

4. We had directed the petitioner to appear before the Assessing Authority along with a copy of the judgment dated 10th December, 2013. It is not disputed before us that the petitioner did appear and thereafter, some hearings took place. The entire problem has arisen due to the notice dated 20th February, 2014. In this notice reference has made to the judgment of this Court and the Assessing Officer issued notice to the petitioner and the main grounds for issuing notice are as follows:--

"WHEREAS, after examination of the returns filed by the dealer, it is detected that the said returns are incorrect and incomplete. As such the dealer has violated the provisions of the TVAT Act, 2004 and Rules made thereunder. It is satisfied me that the dealer filed such incorrect and incomplete return for its personal gain to evade the payment of due VAT, which is unbecoming for such a big dealer.

AND

WHEREAS, the documents so produced are not worthy of credence to deduct the charges towards labour, services and other like charges from the value of the amount received by the dealer from the contractee. Hence, I am satisfied to assess the dealer to my best of judgment in the following manner deducting there from the charges towards labour, services and other like charges."

5. According to the Assessing Officer, the returns filed by the assessee are incorrect and incomplete and further the documents produced by the assessee are not worthy of credence to deduct the charges towards labour, services and other like charges from the value of the amount received by the dealer from the contractee. This is only a general statement made in the notice. Nothing is stated in the notice why the Assessing Authority came to the conclusion that the returns filed are incorrect and why the documents relied upon by the assessee could not be relied upon. It is not the ipse-dixit of the Assessing Officer which is to prevail. The Assessing Officer must give reasons as to why he feels that the returns are incorrect and why he feels that the documents relied upon by the company cannot be relied upon. If the documents are duly audited by Chartered Accountants, the Assessing Officer will have to give reasons why he is not accepting the same. He cannot just pass a single line order saying that he does not accept the same to be correct. That would run contrary to all canons of tax jurisprudence. It is also not understood how the Assessing Officer has come to the conclusion that the maximum deduction on account of labour charges, hiring charges and other charges shall be 9%. He has also not gone to the other aspects of the judgment delivered by this Court in Biplab Kr. Ghosh v. Union of India, [WP(C) 73 OF 2013] with regard to levy on tax only on the value of the goods where transfer of property of goods is involved. This Court has been repeatedly laying down the law that penalty of 150% cannot be levied as a matter of course. While levying the penalty also reasons will have to be given why penalty is being levied and why the maximum penalty should be levied.

6. Therefore, we find that the notice itself is vague. Furthermore, the notice was issued on 20th February, 2014 served upon the company on 21st February, 2014 and the company was expected to file its reply to the notice by 24th February, 2014. True it is that this Court had directed that the matter should be disposed of by 20th February, 2014 but that did not mean that the Assessing Officer should sleep over the matter for one month from the last date of hearing and then wake up at the last moment and virtually give no time to the assessee to put forth its case. There must be a reasonable notice and we are clearly of the view that a reasonable notice would be a notice which gives at least 10 days time to the assessee from the date of service of the notice till date of hearing.

7. Therefore, on two grounds (i) vagueness of the notice and (ii) violation of the rules of natural justice, we without going into the merits of the case, quash the impugned order. The Assessing Officer shall be at liberty to issue fresh notice in which he should clearly spell out the reasons why he feels that the return is a false return and why he feels that the documents filed by the assessee cannot be relied upon. Thereafter, he must give at least 15 (fifteen) days time to the assessee from the date of receipt of the notice to file its reply. He also must give adequate opportunity to the assessee to put forth its case and thereafter decide

the case on merits.

8. We, therefore, quash the impugned order and all the subsequent proceedings thereto in the aforesaid terms and direct that the Assessing Officer may issue fresh notice and proceed further as aforesaid.

