IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17117 of 2015
and
M.P. No.1of 2015

M/s.Sri Gounder Timbers
rep. by its Proprietor S.Kuppusamy
156, Kottur Road,
Pollachi, Coimbatore District ... Peitioner

Vs

The Deputy Commercial Tax Officer
Pollachi East Assessment Circle
Pollachi Coimbatore District
... Respondent

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorari calling for the records of the respondent in his proceedings in TIN 33932261038/ 2014-15 dated 8.4.2015 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for final disposal.

2. This writ petition has been filed by M/s Sri Gounder Timbers, represented by its Proprietor S.Kuppusamy, challenging the correctness of the order issued by the Deputy Commercial Tax Officer, Pollachi East Assessment Circle, Pollachi, in TIN 33932261038/ 2014-15 dated 8.4.2015.

3.1 Learned counsel for the petitioner would submit that the respondent had failed to consider that no show cause notice was served on the petitioner before making the provisional assessment under Section 25 of the Tamil Nadu Value Added Tax, 2006. That apart, according to him, the alleged notice dated 23.01.2015 has not been served upon the petitioner. Continuation his altercation, the learned counsel for the petitioner would further submit that when the petitioner has filed the returns for the period April 2014 to October 2014 by e-filing, even after the same being acknowledged, the respondent, ought not to have come to the conclusion that the petitioner has not filed their returns. Concluding his argument, the learned counsel would further submit that when the respondent has failed to consider that the assessment year 2013-2014 was already over and hence the provisional assessment under Section 25 of the Act cannot be made at the end of the year and therefore, the provisional made for the part of the year on 8.4.2015 become infractious.

3.2. In support of the above contentions, the learned counsel for the petitioner has pressed into service an order passed by this Court in W.P.No.14342 of 2014 dated 05.06.2014, wherein, it has been held that when the whole assessment year was over, it is not open to the Assessing Officer to pass provisional assessment.

4.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), after taking notice is unable to give any explanation in support of the impugned order for the following reasons:

- Firstly, the respondent was not correct in stating in the impugned order that the petitioner had not filed the returns for the period April 2014 to October 2014, since the petitioner had already filed their returns for the said period by e-filing and the same was also acknowledged by them, vide acknowledgments filed as document Nos.1, 3 to 8 filed in the typed set of papers. A mere reading of the returns filed by the petitioner for the aforementioned period show that the petitioner has estimated turnover for a sum of Rs.3,86,750/- for the month of May 2014.

- Secondly, the respondent has not issued any notice before making the assessment. No doubt, the alleged notice dated 23.01.2015 has not been served on the petitioner. This was also admitted by the respondent in the certificate dated 28.05.2015, wherein it is categorically stated that the notice dated 23.01.2015 sent by Registered Post to the petitioner has been returned.

- As rightly contended by the learned counsel for the petitioner, the above issue is squarely covered by Humpty number of orders of this Court. Therefore, it would suffice to mention at this juncture one such order passed by this Court in W.P.No.14342 of 2014 dated 05.06.2014, the relevant portions of which, read as follows:-

> "4. The learned counsel appearing for the petitioner company would submit that the

respondent has passed the impugned order of assessment only for the period of three months and not for the whole year, which is not legally correct. The learned counsel further submitted that after the completion of the assessment year, the respondents have no jurisdiction to pass a provisional assessment order as per the ratio laid down by this Court in K.PURUSHOTHAMAN V. THE STATE OF TAMIL NADU REP.BY THE SECRETARY TO GOVERNMENT , COMMERCIAL TAXES AND RELIGIOUS ENDOWMENTS DEPARTMENT, CHENNAI (WP.No.18415 of 2003 dated 06.10.2003) following the earlier decisions of the Division Bench of this Court in STATE OF TAMIL NADU V. WANDER LIMITED reported in 1990 (vol:79) STC 421 MADRAS, and MAHENDRAKUMAR ISHWARLAL & CO Vs. DEPUTY COMMERCIAL TAX OFFICER reported in 1971 (Vol.28) STC 551 Madras. Therefore, the learned counsel for the petitioner prays that the writ petition has to be allowed by setting aside the impugned order.

5. The learned Additional Government Pleader appearing for the respondent would fairly submit that the matter may be remitted back to the respondent as the impugned order has not been passed in respect of the whole year.

6. I have considered the above submissions.

7. Admittedly, the respondent has not passed the impugned assessment order for the whole year. The respondent has passed the impugned order only in respect of three months, namely, January 2013, February 2013 and March 2013. Therefore, the impugned order is against the decisions of this Court cited supra.

8. In view of the same, I am inclined to set aside the impugned order. Accordingly, this Writ Petition is allowed and the impugned order dated 15.4.2014, is set aside. This matter is remitted back to the respondent and he is directed to pass fresh orders in respect of the whole year, after giving sufficient opportunity to the petitioner, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed. No costs".

Therefore, for all these reasons, the impugned order is liable to go.

5. Accordingly, the writ petition is allowed and the impugned order dated 8.4.2015 passed by the respondent is set aside. The matter is remitted back to the respondent for passing fresh orders, after affording an opportunity of personal hearing to the petitioner.

No costs. Connected miscellaneous petition is closed.

- Sd/-
Assistant Registrar

//True copy//
Sub Assistant Registrar

To

The Deputy Commercial Tax Officer
Pollachi East Assessment Circle
Pollachi Coimbatore District.

+1cc to Mr.Government pleader(taxes) Advocate (sr.29703)

W.P.No.17117 of 2015

GGK(co)
CP 03.08.2015