IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.38416 of 2015
and M.P.No.1 of 2015

Tvl Seven Hills Medtech Systems [Petitioner]
rep. by its Proprietor Mr.G.Sriramulu
NO.927 1st Floor H Block
16th Main Road Anna Nagar Chennai-40

Vs

The Commercial Tax Officer
Ammaindakarai Assessment Circle
Dawlath Towers 7th Floor
Taylors Road Kilpauk
Chennai-10 [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent in TIN : 33061025688/2013-2014 dated 22.7.2015 and quash the same and further direct the respondent to consider the sales return.

For petitioner : Mr.M.Desingu
For respondent : Mr.S.Kanmani Annamalai, AGP

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2. This writ petition is filed under Article 226 of the Constitution of India challenging the order of the respondent dated 22.7.2015 and to direct the respondent to consider the sales return.

3.1 The petitioner is a dealer in buying and selling medical equipments. On 04.09.2014, for the years 2009-10 to 2013-14, VAT audit was conducted by the officers of the Enforcement Wing at the place of business of the petitioner, during which time, the books of accounts were verified by the authorities. Since the Enforcement wing authorities wanted to verify the sales return for the years 2010-11 and 2013-14, the same were produced and on the basis of their report, the assessing authority issued a notice for revision of assessment proposing to disallow the total sales return turnover of Rs.6,10,048/- pertaining to the period for the year 2013-14. In response to the notice, a detailed reply was filed along with documentary evidences and also filed copy of the monthly returns. On 22.07.2015, the revision order was passed by the respondent, without considering the objections filed and disallowed the claim of sales return and imposed the tax on the ground that all the transactions were made prior to the date of VAT audit and the dealers have not produced the details before the Enforcement Wing Officials.

3.2 According to the petitioner, when they appeared personally and shown the details of sales returns which were filed along with the monthly returns, the same were accepted by the assessing authority on the basis of the provisions of deemed assessment under Section 22 of the TNVAT Act and therefore, the petitioners were under the impression that the claim relating to sales returns were accepted and closed. However, the assessing authority passed the revised order without adducing any factual reasons for rejection of claim relating to sales returns. Thus, the assessing authority, simply followed the report of the VAT audit of the Enforcement Wing. The principles of natural justice has been violated and the assessing authority has not applied his mind independently.

3.3 According to the petitioner, as against the assessment order dated 22.07.2015, a rectification petition was filed by the petitioner on 27.08.2015 as contemplated under Section 84 of the Act. However, without affording a reasonable opportunity of being heard in person, the said petition was rejected erroneously on 10.09.2015. Hence, the petitioner is before this Court.

4.1 The learned counsel for the petitioner would submit that the impugned orders are liable to be set aside as being contrary to the principles laid down by this Court in the Judgment reported in (2006) 146 STC 642 (Madras Granites (P) Limited vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another). Further, according to the learned counsel for the petitioner, the impugned order is liable to be set aside since the same was passed without verifying the sales return details filed by the petitioner along with monthly returns. That apart, according to the learned counsel for the petitioner, the respondent ought to have considered the materials independently and come to his own conclusion in the order of assessment. However, from a perusal of the impugned order, it is crystal clear that the respondent has not applied his mind independently. The reason given by him is that the dealers had not produced the related documents before the Enforcement Wing Officers at the time of audit and in the absence of the same, the documents filed by them subsequently before him cannot be accepted.

4.2 The learned counsel for the petitioner would further submit that the assessing authority is duty bound to consider the books of accounts as well as the documents produced by the petitioner without being influenced by any of the findings given by the Enforcement Wing Officials. Hence, non consideration of the books of accounts produced by the petitioner before the respondent vitiates the entire proceedings and therefore the assessment order is bad in law.

4.3 Further, according to the learned counsel for the petitioner, when rectification petition is filed by the petitioner, before passing an order, an opportunity of personal hearing should be given to the petitioner. However, without doing so, rejection order came to be passed by the respondent.

4.4 When this Court posed a question as to whether Section 84 application be directed to be considered since on a perusal of the original affidavit it appears that Section 84 application be directed to be considered and orders passed, the learned counsel for the petitioner submitted that assessment order itself is bad in law and hence suitable time may be given for filing better affidavit since the impugned assessment order itself is liable to be quashed for the reason that the respondent is duty bound to consider the books of accounts as well as the documents produced by the petitioner without being influenced by any of the findings given by the Enforcement Wing Officials, however, the impugned order was passed without doing so. Accordingly, at the request of the learned counsel for the petitioner, the case was adjourned for filing better affidavit.

4.5 Today, When the matter is taken up for hearing, better affidavit was filed by the learned counsel for the petitioner and based on the averments made therein, the learned counsel for the petitioner has prayed for allowing of the writ petition.

5. On the other hand, the learned Additional Government Pleader submitted that the petitioner had not produced the documentary evidences before the Enforcement Wing Officials. He also fairly submitted that the petitioner subsequent to the inspection produced records before the respondent/Assessing Authority, however, the respondent did not consider the same.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. For the assessment years in question, proposing tax liability, notice was issued on 22.05.2015, for which, the petitioner filed a reply on 19.06.2015. The main allegation levelled against the petitioner by the respondent is that they did not produce any of the records and documents when the inspection was conducted by the Enforcement Wing Officials. According to the respondent, the inspection was conducted on 04.09.2014, a revision of assessment notice was issued on 22.05.2015, for which a reply was filed on 19.06.2015 and thereafter, assessment order was passed and hence the same is sustainable. As far as Section 84 application is concerned, according to the respondent, since the provision only permits the assessing officer to correct the mistake which is obvious, glaring and self evident, the decision in original cannot be altered.

8. In the case of Madras Granites (P) Limited vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in 146 STC 642, a Division Bench of this Court made it very clear that when records are produced before the authority concerned, the same should be considered by the authority concerned and by applying his mind independently in the issues related to the assessment, should pass appropriate orders, after affording due opportunity.

9. At this juncture, it is relevant to extract below the operative portion of the said Judgment:-

> "4. No doubt, the assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT) Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. It is well settled that the assessing officer is a quasi-judicial authority and in exercising his quasi judicial function of completing

the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected WPMPs are closed".

10. Admittedly, according to the petitioner, the entire documents are very much available with the petitioner. Simply, for the reason that those documents had not been produced before the Enforcement Wing Officials, the respondent cannot deny to accept those documents for perusal. Hence, for this reason, the impugned order is liable to be set aside and accordingly, the same is set aside and the matter is remitted back to the respondent for passing fresh orders. It is made clear that the petitioner is permitted to produce all the documents available with them to the respondent within a period of two weeks from the date of receipt of a copy of this order and on such filing, the same shall be considered and orders passed, after affording an opportunity of being heard to the petitioner within six weeks thereafter. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

rg

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To
The Commercial Tax Officer
Ammaindakarai Assessment Circle
Dawlath Towers 7th Floor
Taylors Road Kilpauk
Chennai-10

+ 2 ccs to Mr.M.Desingu, Advocate SR 67957, 65585
+ 3 ccs to Spl Govt.Pleader (Taxes) SR 66464, 68515 & 65644

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