IN THE HIGH COURT OF JUDICATURDE AT MADRAS

Dated: 26.02.2015

Coram

The Honourable Mr.Justice S.VAIDYANATHAN

W.P.No.5055 of 2015
and
M.P.No.1 of 2015

Tvl.Mahalakshmi Agencies,
rep.by its Proprietor,
Mr.M.Venkatesan ... Petitioner

vs.

The Assistant Commissioner(CT)
Tambaram Assessment Circle,
No.19A, Second Floor,
Sivashanmugam Road,
Tambaram West,
Chenani-45 ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of respondent assessment proceedings in TIN 33150886589/2011-2012 dated 8.1.2015 and quash it as illegal, unlawful and unconstitutional.

For Petitioner : Mr.M.Desingu

For respondent : Mr.V.Haribabu,A.G.P.(T)

ORDER

The petitioner has come up with this writ petition seeking for a writ of certiorari to all for the records of the revised assessment proceedings in TIN 33150886589/2011-2012, dated 8.1.2015, and quash the same as illegal, unlawful and unconstitutional.

2. The case of the petitioner is that pursuant to the reply by the petitioner, on receipt of the revised assessment notice, they appeared before the respondent for personal hearing and produced the books of accounts along with the statement of trading accounts and other relevant documents, but the respondent, without considering those documents, passed the revised assessment order, based on the paper report and levied tax on unsold stock without following the

provisions of Section 3(2) of the Tamil Nadu Value Added Tax Act,2006.

3. It is the case of the petitioner that they have filed returns for the year 2011-12 in Form-K and paid tax at 0.5%, after exercising the option under Section 3(4)(a) of the said Tamil Nadu Value added Tax Act, 2006. The petitioner contended that the revised assessment order is passed without verification of the documents. It is also contended that the respondent has passed the revised assessment order adopting the wrong provision of Section 3(1) of the Act and the same is causing great hardship to the petitioner.

4. The learned counsel for the petitioner submitted that without considering the documents produced by the petitioner, and simply adopting the paper report, the respondent has passed the revised assessment order without any basis and the same is arbitrary and non-est in the eye of law. He further contended that the stock on hand at the end of a particular period cannot acquire the character of last purchase till they are actually disposed of by the dealer and the same cannot be said to be the sales effected by the dealer to another dealer in the State. According to him, the decision of the authority runs counter to the judgment of the Honourable Apex Court in the State of Madras v. T.Narayanaswami Naidu and another (1967 SCR (3) 622)

5. Heard the learned counsel on either side and perused the records carefully.

6. The judgment relied on by the learned counsel for the petitioner would not be applicable to the facts of this case, as the Special Leave Petition was directed against the judgment of this Court in the tax cases, which were against the orders of the Sales Tax Appellate Tribunal.

7. The petitioner has got remedy before the Appellate Deputy Commissioner (CT) and the appeal has got to be filed within a period of 30 days. Apart from this statutory period, the said authority has also got powers to condone the delay of further period of 30 days. There is no violation of principles of natural justice and the authority has taken a particular view based on the statement and documents available before him. Whether such a view is correct or not can be decided by means of an appeal before the appellate authority and this Court is not inclined to grant the relief sought for by the petitioner. It is open to the petitioner to prefer an appeal within the time stipulated under the Act. While computing the period of limitation, the authority concerned is directed to exclude the period spent in prosecuting this writ petition viz., 24.02.2015 to this date.

8. With the above observation, the writ petition is dismissed. No costs. Connected miscellaneous petition is dismissed.

-s/d-
Assistant Registrar(CO)
Dt:3/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner(CT)
Tambaram Assessment Circle,
No.19A, Second Floor,
Sivashanmugam Road,
Tambaram West,
Chenani-45

2. The Section Officer
Current Section,
High Court, Madras.

+ 1 cc to the Special Government Pleader (Taxes) SR 10999

+ 1 cc to Mr.M.Desingu, Advocate SR 10521

ug(co)
prk3/3

W.P.No.5055 of 2015
and
MP.No. 1 of 2015

29.01.2015