IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.20674 of 2016
and
W.M.P.No.17757 of 2016

K.S.Gunasekaran ... Petitioner

Vs

The Assistant Commissioner (Commercial Taxes),
Perundurai Assessment Circle,
Perundurai - 638 052.
Erode District, Tamil Nadu. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent pursuant to the order dated 7.4.2016 in TIN No.33382924287/2011-2012, quash the same and direct the respondent to pass an order based on the proof of documents already produced and if necessary to call upon the petitioner for any further required documents in connection with the assessment proceedings for the year 2011-2012 giving sufficient and reasonable opportunity to the petitioner.

For petitioner ... Mr.T.Sundar Rajan

For respondent ... Mr.V.Haribabu
Additional Government Pleader

ORDER

Heard Mr.T.Sundar Rajan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader accepting notice for the respondent. By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by the petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956.

3.The challenge in this writ petition is to an order of assessment passed by the respondent for the year 2011-2012.

Though the learned counsel for the petitioner elaborately made submissions on the factual issues, these issues need not be considered for disposal of this writ petition in the light of the ground raised by the petitioner that the respondent, while passing the order of assessment, has been solely guided by the report submitted by the Enforcement Officials. The accounts of the petitioner were audited by the Enforcement Wing Officials on 23.04.2015, 24.04.2015 and 27.04.2015. Based on the report submitted by the Enforcement Wing, the respondent issued a notice to the petitioner on 30.09.2015. In the notice, it was pointed out that there is a difference of sales turnover noticed by the Inspecting Officials. By referring to the alleged difference, even in the show cause notice the respondent has mentioned that the petitioner has stated that the differential turnover is relating to the Sales of Charcoal which is an exempted commodity. However, they have not proved this with documentary evidence. Therefore, the respondent proposed to assess the said turnover under Section 27(1)(a) of the TN VAT Act. The petitioner was granted 15 days time to submit their objections and they were at liberty to seek for personal hearing. The petitioner submitted their objections on 30.12.2015 and enclosed a copy of the authentication signed by the Audit Officer. This explanation was received by the respondent as is evidenced from the impugned order of assessment.

4.On a perusal of the impugned order of assessment, it is seen that the respondent has verbatim extracted the objections given by the petitioner which are contained in paragraphs 1 to 8 of the impugned order. Thereafter, all that the respondent has stated is that the Enforcement Wing Officials would have considered it on merits and suggested levy of tax accordingly. Further, it is observed that it is stated that even though the dealers have stated about the submission of documents of Charcoal before the Enforcement Officials, they have not furnished them before the Assessing Officer for his perusal, as they were assured in their sworn statement dated 27.04.2015, before the Inspecting Officials. In the objections given by the petitioner, the petitioner has specifically stated that the authenticated copy of the delivery receipt duly signed by the Audit Officer has been enclosed along with the objections. However, the respondent did not make any endeavour to examine as to whether the stand taken by the petitioner is correct more particularly whereas an Assessing Officer, he had to independently consider the plea. He would very well called for the petitioner to produce the documents. The manner in which the assessment has been completed by the respondent is not in accordance with law.

5.The settled legal position is that the Assessing Officer being an independent statutory authority cannot be solely guided by the report given by the Enforcement Officials. In the instant case, a show cause notice came to be issued based on the report of the Enforcement Wing. If such is the case, then the respondent should peruse the objections given by the petitioner, verify the facts, if there are any doubts nothing prevents the respondent from calling upon the petitioner to appear in person and produce the documents. Thus, I am satisfied that the impugned order of assessment has not been made in accordance with the provisions of the Act and liable for interference as the Assessing Officer has abdicated his statutory duties.

6.Accordingly, the Writ Petition is allowed. The impugned order is quashed and the matter is remanded for fresh consideration, who shall issue a notice to the petitioner call upon them to produce all the documents and after hearing the petitioner in person, proceed to complete the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sgl

To

The Assistant Commissioner (Commercial Taxes),
Perundurai Assessment Circle,
Perundurai - 638 052.
Erode District, Tamil Nadu.

+1 cc to the Special Government Pleader(T) HighCourt Madras sr34347
+1cc to Mr.T.Sundar Rajan, Advocate Sr.33842[13/07/2016]

W.P.No.20674 of 2016

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