

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:1/6/2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.3334 and 3335 of 2015
and
MP.Nos.1 and 1 of 2015

M/s.Kumaran Hardwares
rep. by its Managing Partner ...Petitioner in Both the WPS.
Vs.

1.The Commercial Tax officer
Tirumudivakkam Assessment Circle
Chennai-45.

2.The Commercial Tax officer
Tambaram I Assessment Circle
Chennai-45.

...Respondents in Both the WPS.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari (i) to call for the records of the impugned order of re-assessment in TIN.No.339180882644/2007-08 dated 30/1/2015 on the files of the first respondent herein and quash the same (WP.No.3334 of 2015); and (ii) to call for the records of the impugned notice in TIN.No.339180882644/2007-08 dated 30/1/2015 on the files of the first respondent herein and quash the same (WP.No.3335 of 2015).

For Petitioner : Ms.Aparna Nandakumar
For Respondents : Mr.Manokaran Sundaram,
Addl.Govt.Pleader

C O M M O N O R D E R

Heard the learned counsel on either side.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the Act). In W.P.No.3334 of 2015, the petitioner challenges the order passed by the first respondent dated 30.1.2015, which is an order of re-assessment by determining the petitioner's turnover at Rs.51,43,654/-. The challenge in W.P.No.3335 of 2015 is to a notice issued by the first respondent dated 30.1.2015 proposing to levy penalty under

Section 27(3) of the Act. Therefore, the orders to be passed in W.P.No.3335 of 2015 would depend upon the outcome of the writ petition in W.P.No.3334 of 2015.

3. The learned counsel for the petitioner submitted that the impugned order is bad in law on account of the fact that the earlier proceedings, which have attained finality in respect of the same assessment year, is sought to be reopened by the first respondent, who has become the Assessing Officer from 2014 onwards.

4. To buttress this submission, the learned counsel for the petitioner invited the attention of this Court to an order of assessment dated 12.3.2010, in which, the total turnover was determined by the second respondent (original Assessing Officer) at Rs.49,57,639/-. Therefore, this endeavor of the learned counsel for the petitioner to convince this Court to state that the first respondent, who has become the Assessing Officer of the petitioner from 2014, cannot seek to reopen the turnover having already been determined at Rs.49,57,639/-

5. However, the learned Additional Government Pleader appearing for the respondents submitted that annual turnover for the assessment year 2007-2008 was found to have exceeded Rs.50 lakhs and therefore, the second respondent had issued the show cause notice on 9.9.2009 stating that the petitioner is mandatorily required to file return in Form 1 from April 2007. However, the said proceedings were not taken up for adjudication and the matter was lying dormant. After jurisdiction was transferred to the first respondent, the first respondent, on perusal of files, initiated appropriate proceedings.

6. After hearing the learned counsel for the parties and perusing the materials available on record, it is seen that the order of assessment dated 12.3.2010 was an order based on self assessment made by the petitioner and there is no reference to the earlier show cause notice dated 9.9.2009, in which, the Assessing Officer (second respondent) came to the conclusion that the petitioner's annual turnover for the concerned year exceeded Rs.50 lakhs. Therefore, the assessment order dated 12.3.2010 based on self assessment in accordance with Section 22 (2) of the Act, cannot be said to be an embargo for the first respondent to initiate the present proceedings.

7. Though the petitioner has given a reply to the earlier show cause notice dated 9.9.2009 by a reply dated 30.9.2009, the matter did not attain finality. Therefore, the annual turnover of the dealer for the concerned assessment year did not attain finality and the averment made by the petitioner that merely

because an order has been passed under Section 22(2) of the Act on 12.3.2010, it should be concluded that the annual turnover has been taken, is an argument stated to be rejected. The impugned order cannot be set aside on the ground that it is a reopening of a settled issue, when the facts remain otherwise.

8. This leaves us with one more question as to whether the petitioner was afforded a reasonable opportunity to put forth their contention. Though the first respondent/Assessing Officer refers to the petitioner's objection dated 30.9.2009, it is seen that the petitioner was not afforded an opportunity of personal hearing. On this ground alone, the petitioner is entitled to succeed.

9. Accordingly, W.P.No.3334 of 2015 is allowed and the impugned order is set aside. The matter is remitted back to the first respondent for fresh consideration and while doing so, the first respondent shall take into consideration the reply given by the petitioner dated 30.9.2009 to the notice issued by the second respondent dated 9.9.2009 and after affording an opportunity of personal hearing, pass a reasoned order on merits and in accordance with law. The above exercise shall be completed within four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed.

10. In view of the order passed in W.P.No.3334 of 2015, the show cause notice proposing to levy penalty under Section 27(3) of the Act has to be necessarily set aside. Accordingly, W.P.No.3335 of 2015 is allowed leaving it open to the first respondent to proceed in accordance with law. No costs. Consequently, the connected MP is closed.

rs

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax officer, Tirumudivakkam Assessment Circle, Chennai-45.

2.The Commercial Tax officer, Tambaram I Assessment Circle, Chennai-45.

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KR/9/6/16

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