IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.27191 & 27192 of 2016
and
W.M.P.Nos.23342 and 23343 of 2016

Tvl. Amman Balaji Two Wheelers (Pvt.)Ltd.,
rep. by its Managing Director,
K.Rajendran. ...Petitioner in both W.Ps

Vs.

1. The Assistant Commissioner (CT)
Omalur Assessment Circle,
Omalur, Salem District.

2. The Appellate Deputy Commissioner (CT)
C.T. Building, Salem. ...Respondents in both W.Ps

Prayer in W.P.No.27191 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the second respondent in AP.No.VAT.57/2015, dated 27.11.2015, and to quash the same insofar as the adverse findings rendered against the petitioner is concerned.

Prayer in W.P.No.27192 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the second respondent in AP.No.VAT.64/2015, dated 27.11.2015, and to quash the same insofar as the adverse findings rendered against the petitioner is concerned.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice for respondents.

2. Since the issue involved in both the Writ Petitions is identical in nature, and the parties are one and the same, they have been taken up together, and disposed of by this common order, even at the stage of admission.

3. The petitioner has challenged the order passed by the Appellate Deputy Commissioner (CT) Salem, in respect of the Appeals filed by them against the orders of assessment passed by the first respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2012-13 and 2013-14, dated 01.12.2014.

4. It may not be necessary to go into the merits of the contentions raised by the petitioner with regard to the manner, in which, assessment was completed by the first respondent, since the petitioner had challenged the same before the second respondent. Therefore, the second respondent, being the Appellate Authority, was required to examine the grounds raised by the petitioner, as to its tenability and acceptance.

5. On a reading of the impugned orders, it is seen that the Appellate Authority did not agree with the petitioner, and the findings recorded by him appear to be the findings, which are virtually rejecting all the pleas raised by the petitioner. If that be the case, then, the Appellate Authority ought to have dismissed the Appeals. However, in the last para of the impugned orders, the Appellate Authority came to the conclusion that the case requires fresh investigation in order to sustain the assessment, and that the petitioner has not produced documents in support of their contention, and one more opportunity may be provided to the petitioner to produce all the documents and the Assessing Officer to verify records and genuineness of the transaction, and therefore, the Appellate Authority proceeded to set aside the assessment, including the penalty, and remanded the case back to the Assessing Officer for thorough verification.

6. The learned counsel appearing for the petitioner submits that the petitioner is before this Court, on the ground that, if the matter is remanded to the first respondent, with the findings recorded by the Appellate Authority, then, obviously, the first respondent, being a Subordinate Officer, will verbatim repeat the findings recorded by the Appellate

Authority/second respondent, and confirm the assessment. It is further submitted that, had the second respondent dismissed the petitioner's Appeals, then, the petitioner could have preferred Second Appeals before the Tamil Nadu Sales Tax Appellate Tribunal.

7. After hearing the learned counsel appearing for the parties, and perusing the materials placed on record, it is evidently clear that the second respondent has committed error while passing the impugned orders. If the Appellate Authority is of the view that the matter requires reconsideration, then, he ought to have rendered findings to the said effect, and then remanded the matter to the Assessing Officer, to redo the assessment in accordance with law. However, in the instant cases, the Appellate Authority has recorded certain findings, which are against the petitioner, yet, remanded the matter for thorough verification. Both these conclusions cannot sail together.

8. The Hon'ble Division Bench of this Court, in (Pizzeria Fast Foods Restaurant (Madras) Pvt. Ltd., Vs. Commissioner of Commercial Taxes, Chennai and others) reported in (2005) 140 STC 97, examined the effect of the circular issued by the Commissioner, under Section 28-A of the Tamil Nadu General Sales Tax Act, 1959, on the Assessing Officer, or the Appellate Authority. While considering the said question, the Hon'ble Division Bench pointed out that, if the Commissioner has issued circular, he being the Superior Authority to the Assessing Officer, or the Appellate Authority, it would be impracticable to expect the Subordinate Authority to take a view contrary to the view expressed by the Superior Authority/Commissioner.

9. The ratio decidendi, laid down by the Hon'ble Division Bench, in the above referred case, could be applied to the instant cases as well. That is to say, if the Appellate Authority has rejected all the grounds raised by the petitioner in the Appeals, which according to the petitioner has been erroneously done, and remanded the matter to the Assessing Officer, obviously, the Assessing Officer, who is a Subordinate Officer to the Appellate Authority, will be guided by those findings rendered by the Superior Authority. Therefore, when the Appellate Authority has come to the conclusion that the matter requires to be reexamined, he should have refrained from making any adverse observations on the merits of the assessment.

10. In the light of the above, the Writ Petitions are partly allowed, the findings recorded by the Appellate Authority are vacated, and the matter is remanded to the first respondent for fresh consideration, who shall redo the assessment after thorough verification of the records and after affording

opportunity of personal hearing to the petitioner. It is made clear that the first respondent should not be, in any manner, influenced by any of the observations made by the Appellate Authority in the impugned orders, as this Court has already eschewed those findings of the Appellate Authority, and the impugned orders are confirmed only to the extent of the remand portion. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Commissioner (CT)
   Omalur Assessment Circle,
   Omalur, Salem District.

2. The Appellate Deputy Commissioner (CT)
   C.T. Building, Salem.

+1 cc to Special Government Pleader sr 44452
+1 cc to Mr.R.Senniappan Advocate sr 44627

Writ Petition Nos.27191 & 27192 of 2016

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