IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12807 of 2004

M/s Cauvery Electronics ... Petitioner

Vs

1. The Joint Commissioner III (SMC)
   Commercial Taxes
   Chepauk, Chennai 600 005.

2. Deputy Commercial Tax Officer
   Palakarai-II Assessment Circle
   Trichy. ... Respondents

Prayer: The Writ Petition filed under Article 226 of the Constitution of India, seeking for Writ of certiorari to call for the records of the first respondent in its proceedings in SMR No. 687 of 1998 quash the orders therein dated 28.05.2003.

For Petitioner : Mrs.Radhika Chandrasekaran
for K.Vaitheeswaran

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

Asstd by Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mrs.Radhika Chandrasekaran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, Assisted by Mr.K.Venkatesh, Government Advocate, appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 [TNGST Act], has filed this Writ Petition, challenging the order of passed by the first respondent, Joint Commissioner of Commercial Taxes-III, exercising his power of suo motu revision under section 34 of the TNGST Act, against the order passed by the Appellate Assistant Commissioner (CT), Trichy, dated 24.09.1997.

3.Before this Court examine the facts of the case, it would be relevant to take note of the powers conferred on the Appellate Authority and the powers conferred on the Revisional Authority who has exercised the power of suo motu Revision.

3.1 Section 31 of the TNGST Act, deals with the Appeal to the Appellate Assistant Commissioner and in terms sub-section (1) of Section 31 of the TNGST Act, any person objecting to an order passed by the appropriate authority under Section 4-A, sub-section (3) of Section 10, Section 12, Section 12-!,Section 14, Section 15, sub-sections (1) and (2) of Section 16, Section 18, sub-sections (2)of Section 22, Section 23 or Section 27 other than an order passed by an Assistant Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Assistant Commissioner having jurisdiction.

3.2 Sub-section (3) of Section 31 of the TNGST Act, deals with the powers of the Appellate Assistant Commissioner and the manner in which the appeal should be dealt with and the said provision reads as follows:

(a) in the case of an order of assessment --

(i) confirm,reduce,enhance,or annul the assessment or the penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think it fit; or

(b) in the case of any other other, confirm, cancel or vary such orders."

Thus, in terms of the above provision, the Appellate Assistant Commissioner exercising powers under section 31 of the TNGST Act, could confirm, reduce, enhance, or annul the assessment or the penalty or both; set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or pass such other orders as he may think it fit; or in the case of any other, confirm, cancel or vary such order of assessment.

4. Thus, the Statute gives very wide powers to the Appellate Authority in terms of sub-section (3) of Section 31 of the TNGST Act. This is because, the Appellate Proceedings are continuation of the assessment proceedings. The Appellate Authority can revise and re-write the order of assessment and

whatever discretion which has been conferred on the Assessing Officer as well. The said view is supported by the decision of the Hon'ble Full Bench decision of this Court in the case of State of Tamil Nadu Vs. Arulmurugan & Co., [(1982) 51 STC 381, which has been affirmed by the Hon'ble Supreme Court in [(1994) 94 STC 410 SC)]

5. Section 34 deals with the Special powers of Joint Commissioner of Commercial Taxes. As could be seen from the said provisions, it confers suo motu powers of the Joint Commissioner to call for and examine an order passed or proceeding recorded by the appropriate authority under section 4-A, Section 12, Section 12-A, Section 14, Section 15 or sub-section (1) or (2) of Section 16 or an order passed by the Deputy Commissioner under sub-section (1) of Section 32 or sub-section (3) of Section 33 of the Act, and the Statute further circumscribe that such power is exercisable (if this said order is passed by the appropriate authority or Deputy Commissioner is prejudicial to the interest of the Revenue), may make such inquiry or cause such inquiry to be made and subject to the provisions of the Act, may initiate proceedings to revise, modify or set aside such order or proceeding. Thus, the power of suo motu Revision conferred on the Joint Commissioner is exercisable for the purpose of safeguarding the interest of the Revenue.

6.In the instant case, the order impugned is an order passed by the Joint Commissioner exercising the power under section 34 of the TNGST Act. The undisputed facts are that the assessment for the year 1996-1997 was completed by the Assessing Officer, by an order dated 30.04.1997, as against which, the petitioner preferred an Appeal before the Appellate Authority in Appeal No.641 of 1997. The Appellate Authority by an elaborate order, taking into consideration of all the aspects, found that the case as projected by the petitioner was acceptable and accordingly, allowed the Appeal. By way of implementing the order of the Appellate Authority, the consequential order was passed by the Assessing Officer on 30.04.1997. After about one year, the Joint Commissioner, initiated suo motu revision proceedings.

7.From the para-wise instructions, it is seen that such notice was issued on 30.04.1998 and thereafter four notices were issued, the last of which was on 04.02.2003. This explanation is given to meet the contentions raised by the petitioner that the proceedings are not barred by limitation is by contending that the initiation was done on 30.04.1998. Thus, the only issue to be seen is as to whether the Revisional Authority was satisfied with the order passed by the Appellate Assistant Commissioner (CT), Trichy, or the same has to be revised, as he found something prejudicial to the interest of the Revenue.

8.As noticed above, while exercising the power under section 34 of the TNGST Act, the Joint Commissioner was of the view that any order or proceeding prejudicial to the interest of the Revenue, he should make such an enquiry or cause such enquiry to be made and then initiate proceedings to revise, modify or set aside such order. On a reading of the impugned proceedings, it is evidently clear that the Revisional Authority has not interfered with the factual findings recorded by the Appellate Assistant Commissioner, which is an elaborate order dealing with all issues, item-wise. But, the Revisional Authority relied upon the statement/observation of the Inspecting Officer, who inspected the place of business of the petitioner. Thus, what the Joint Commissioner seeks to do is to confront the petitioner with the findings of the Inspecting Officer, which was admittedly done on 28.12.1995, much prior to the order passed by the Appellate Assistant Commissioner. Thus, the authority namely the Revisional Authority has not conducted any enquiry on his own while exercising the power under section 34 of the Act.

9.The report submitted by the Inspecting Officer in the opinion of this Court can be treated as first information report, based on which, action could be initiated by issuing notice. As this was not done, it resulted in an order of dismissal, which has been set aside by the Appellate Authority by an order dated 24.09.1997. The Appellate Authority's order is a well reasoned order, which dealt with each of the items. Therefore, the Revisional Authority cannot contend that what was stated by the Dealer before the Inspecting Officer was different and he cannot for that reason reject or interfere with the order passed by the Appellate Assistant Commissioner. The Revisional Authority should have come to a conclusion that the order of the Appellate Assistant Commissioner suffers from illegality, resulting in prejudice to the interest of the Revenue. Therefore, this Court is of the view that the order passed by the Revisional Authority solely based upon the report of the Inspecting Officers could not have been a basis for disbelieving the stand taken by the petitioner before the Appellate Authority, which decision was arrived at based on the facts placed before the Appellate Authority. Further, the Revisional Authority does not dispute the factual position and if such is the case, no case has been made out for reviewing the order passed by the Appellate Authority. Therefore, the impugned order calls for interference.

10.It is submitted by the learned Additional Government Pleader that as against the impugned order, an appeal ought to have been filed before the Special Tribunal.

11.At the time when the Writ Petition was filed there no Coram (Appellate Tribunal) and therefore, the petitioner has approached this Court and taking note of the fact that the Writ Petition is pending from 2004, this Court does not propose to relegate matter to the Tribunal.

12.For all the above reasons, the Writ Petition is allowed and the impugned order is set aside. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rpa

To

1. The Joint Commissioner III(SMC)
   Commercial Taxes
   Chepauk, Chennai 600 005.

2. The Deputy Commercial Tax Officer
   Palakarai-II Assessment Circle
   Trichy.

+1cc to the Special Government Pleader(T), S.R.No.50455

W.P.No.12807 of 2004

NR(CO)
CA(22/09/2016)