BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD) No.13965 of 2016
and
W.M.P.(MD) No.10390 of 2016

M/s.Super Agencies
rep.by its Proprietrix
Jennath Begum
No.42, Pattani Street
Orathanadu
Thanjavur District ... Petitioner

-vs-

The Commercial Tax Officer (FAC)
Pattukkottai - II Assessment Circle
Pattukkottai
Thanjavur District ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records of the respondent in TIN No.33444180792/2010 - 2011, dated 04.05.2016 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

Mr.R.Karthikeyan, learned Additional Government Pleader, takes notice for the respondent. With the consent of both parties, this writ petition is taken up for final hearing at the admission stage itself.

2. The prayer in this writ petition is for the issuance of a writ of certiorari to quash the impugned assessment order, dated 04.05.2016, passed by the respondent herein, in TIN No.33444180792/2010-2011.

3. The learned counsel for the petitioner submitted that the respondent, a quasi-judicial authority, should act fairly by properly applying mind to the facts and circumstances of the case, before passing the assessment order. According to him, in the present case, he was influenced by the communication issued by the Audit Department, indicating certain mistakes and errors in the previous assessment order. In other words, when the Assessing Officer received a communication from the Audit Department to the effect that there were certain irregularities / errors in the previous assessment order and he decided to act on the same, before so proceeding, it is his bounden duty to furnish a copy of the said communication to the petitioner. But, without furnishing a copy of the same and seeking his explanation as to why the previous assessment should not be taken into account, the respondent hurriedly proceeded to pass the impugned order. By referring to a decision of this Court in ***Madras Granites (P) Ltd. v. Comml. Tax Officer & another [2006 STC 642 Vol.146]***, wherein, it was held that it is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities, learned counsel would say that overlooking the same, the respondent has erroneously passed the impugned order and therefore, the same is liable to be set aside.

4. This Court, for the following two reasons, is not able to accept the arguments advanced by the learned counsel for the petitioner. Firstly, the petitioner was issued with three pre-revision notices, dated 01.03.2016, 31.03.2016 and 15.04.2016, for which, he has filed his objections on 27.04.2016, to the respondent. But, nowhere, he has raised any objection with regard to the revision of assessment on the ground that the Assessing Officer cannot proceed on the basis of the communication received from the Audit Department, and secondly, the petitioner waited for the final assessment orders to be passed. Accordingly, the impugned final assessment order was passed on 04.05.2016. In such circumstances, this Court, sitting under Article 226 of the Constitution of India and not being an Appellate Authority, is not inclined to entertain this writ petition as the petitioner has got appeal remedy to challenge the correctness of the impugned order before the appellate authority.

5. In the result, the writ petition is dismissed. However, the petitioner is given two weeks time, from the date of receipt of a copy of this Order, to work out his appeal remedy before the concerned Appellate Authority and on preferring such appeal, the Appellate Authority shall consider the same and pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To:

The Commercial Tax Officer (FAC),
Pattukkottai - II Assessment Circle,
Pattukkottai,
Thanjavur District.

+1 CC to Mr.K.SOUNDARARAJAN, Advocate, SR No.42312
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.42608

krk
SH/DB:01.09.2016:3P/4C

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