BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD) No.17428 of 2016
and
WMP(MD)No.12625 of 2016

M/s.Greens Land Restaurant,
rep.by its Partner
K.M.Syed Jalaluthin ... Petitioner

-vs-

1. The Assistant Commissioner (CT)
   Tenkasi.

2. The Appellate Deputy Commissioner (CT),
   Tirunelveli. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33185684920/2015-16 and quash the order dated 31.05.2016 as it is unlawful and against the provisions of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.R.D.Ganesan

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

This writ petition has been filed to quash the order dated 31.05.2016 passed by the first respondent, as it is unlawful and against the provisions of the Tamil Nadu Value Added Tax Act 2006.

2.Heard learned counsel appearing for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents. By consent the writ petition itself is taken up for final disposal at the admission stage.

3.The petitioner is running a restaurant. For the assessment year 2015-16 (TNVAT), the petitioner has reported the total and taxable turnover and assessed accordingly under self assessment scheme as per section 22(2) of the Act. The first respondent issued the notice dated 28.04.2016 for revision of assessment under Section 27 of the TNVAT Act. The petitioner has filed a detailed objection stating that the impugned proposal is illegal and unsustainable in law.

4.The grievance of the petitioner is that the revision of assessment made by the first respondent is against the provisions of the Act. In fact, self assessment for the year 2015-16 shall be deemed to have been completed on 31st day of October, 2016. Hence, the revision of assessment made under Section 27 is available within a period of six years, only from the date of assessment, i.e, on and from 31.10.2016. In such circumstances, even prior to expiry of the date for deemed original assessment to come into force, the respondent has no power to initiate the re-assessment proceedings under Section 27 of the TNVAT Act. The petitioner has also filed reply dated 03.05.2016. Despite a detailed reply filed by the petitioner, the respondent has simply overruled the objections without giving any reasons and passed the impugned order dated 31.05.2016. Therefore, it is liable to be set aside.

5.The learned Additional Government Pleader appearing for the respondents objected this Writ Petition on the ground that remedy is open to the petitioner to challenge the impugned order by way of an appeal and filing of appeal is also barred by limitation.

6.Even though alternative remedy is available, as the order passed is devoid of reasons, it can be challenged in the writ proceedings.

7.The learned counsel appearing for the petitioner has relied upon the order passed by this Court in WP(MD)No.6655 of 2010, dated, 11.02.2011 in which, at paragraph - 6, it has been held as follows:

> *"6.There is no dispute that the respondent has issued a notice to the petitioner on 18.06.3009 calling upon them to show-cause as to why the assessment should not be revised. The petitioner in their reply notice dated 07.08.2009, justified their stand. The proceedings before the respondent was nothing but statutory proceedings and hence the respondent was bound to consider the objections made by the petitioner. However, the only reason recorded by the respondent is that the objections are over-ruled as they are not acceptable. The said reasoning in my opinion, cannot be a valid reason so as to sustain the order."*

8.In this case also, the objections filed by the petitioner is overruled by the first respondent and the impugned order has been passed without giving reasons. Therefore, this Writ petition is allowed and the impugned order dated 31.05.2016 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to give an opportunity of hearing to the petitioner and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP(MD)No.12625 of 2016 is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
   Tenkasi.
2. The Appellate Deputy Commissioner (CT),
   Tirunelveli.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 56639
+ 1 CC TO Mr.R.D.GANESAN, ADVOCATE IN SR No. 56327

MJ
TE/GSV-PM : 18/11/2016 : 3P/5C

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