IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5052 of 2017
& W.M.P.No.5340 of 2017

Tvl.R.R.Traders,
Rep. by its Proprietor,
M.Rajeshkumar,
No.6/228-A, Mohandas Nagar,
Mummudi, Thalaivasal Post,
Attur Taluk,
Salem - 636 112. ... Petitioner

Versus

The Deputy Commercial Tax Officer,
Attur (Rural), Assessment Circle,
Attur. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records on the file of the respondent in TIN/33393142095/2014-15 dated 03.02.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondent and with their consent, the writ petition is taken up for final disposal.

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'') on the file of the respondent herein. The petitioner is aggrieved by an order of assessment passed by the respondent dated 03.02.2017 for the assessment year 2014-15. The respondent has issued a notice dated 14.11.2016, stating that on cross verification of purchase details of the petitioner with reference to other dealers' Annexure-II, it revealed that they have made certain sales for a turnover which was mentioned in the notice. The consequent sales turnover were not disclosed and reported vide their monthly returns and tax due on such output value were not paid during the year 2014-2015.

3.Further, it is stated that the dealers, who have opted and paying tax at compounding rate of 0.5% violating the provisions of Section 3(4) of the Act by willfully suppressing the sales in their monthly returns, are deemed to have committed an offence under Section 71 of the Act. Therefore, it was stated that the petitioner is disqualified for deemed assessment under Section 22 of the Act and the respondent proposed to assess the petitioner to the best judgment of the Assessing Authority, for the relevant year 2014-2015 as provided under Section 28(1) of the Act. Apart from the above, the respondent has also proposed to levy penalty as applicable under Section 27 of the Act.

4.The petitioner vide objections dated 05.12.2016, among other things, submitted that their total turnover for the relevant year is Rs.8,45,610/- only and that they have not violated any of the conditions prescribed under Section 3(4) of the Act and requested the respondent to reconsider the proposals and levy tax at 0.5% on their turnover. The petitioner enclosed the Profit and Loss Account for the year 2014-2015, to establish their stand that their total turnover is below Rs.50 lakhs. Though such a stand was taken by the petitioner in their objections, the respondent, without application of mind to the objections raised, in a most cryptic and arbitrary manner, completed the assessment on totally vague grounds.

5. The impugned order is a clear example of misuse of the statutory power of the Assessing Officer and is an example to show how the assessment should not be made. There is no disclosure as to why the objections raised by the petitioner should not be accepted. There is no finding on the Profit and Loss Account produced by the petitioner to substantiate their statement that their total turnover is Rs.50 lakhs. There are several other defects that can be pointed out in the manner in which the respondent completed the assessment.

6. Thus for all the above reasons, the impugned assessment order is liable to be set aside. Accordingly, the

writ petition is allowed and the matter is remitted back to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner after perusing all the documents produced by the petitioner and thereafter redo the assessment by passing a reasoned order with full application of mind. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dn/rsi

To

The Deputy Commercial Tax Officer,
Attur (Rural), Assessment Circle,
Attur.

+1cc to Special Government Pleader SR.No.46233
+1cc to Mr.R.Senniyappan, Advocate SR.No.46689

W.P.No.5052 of 2017

PVS(CO)
GN(20/07/2017)