IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.7552 of 2017
&
WMP No.8234 of 2017

M/s.General Radio & Electronics
represented by its Proprietor
Mr.T.M.Krishnan
No.157 S.K.Road
Ambur - 635 502 .. Petitioner

Vs.

The Assistant Commissioner (CT),
Ambur Assessment Circle,
Ambur .. Respondent

Prayer: Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the respondent in his proceedings in TIN 33524260094/2015-16, quash the assessment order dated 30.12.2016 in the light of the judgment of this Court dated 01.03.2017 made in W.P.No.105 of 2016.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.Narmadha Sampath
Special Government Pleader

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COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondent. With consent on either side, the writ petition itself is taken up for final disposal as the pleadings are complete.

2. The petitioner, who is a registered dealer on the file

of the respondent, has filed this writ petition challenging the Assessment Order dated 30.12.2016 for the Assessment Year 2015-16 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act).

3. The petitioner is a dealer in Electronic Goods and has effected purchase of goods from local registered dealers to whom the petitioner has paid taxes. The petitioner was filing the monthly returns in Form K for the Assessment Years 2010-11 to 2015-16 and was paying tax at 1% in terms of Section 3(4)(a) of the TNVAT Act.

4. The petitioner's place of business was inspected by the Enforcement Wing Officers on 29.12.2015 and 30.12.2015. On verification of the purchases and sales declared by the petitioner and comparing the same with MIS reports available in the Department's website, it revealed that the petitioner has effected purchases to the tune of Rs.11,29,28,630/- during the period from 2010-11 to 2015-16 (upto 29.12.2015), whereas the sales turnover reported in Form K monthly returns filed by the petitioner was only to the tune of Rs.1,79,76,129/- for the very same period. Therefore, the inspecting officers opined that the difference of Rs.9,49,52,506/- amounted to sales suppression. It was further alleged that the scrutiny of sales details with Annexure I of the purchasing dealers revealed that the petitioner had collected tax on the sales, which is in violation of Section 3(4)(a) of the TNVAT Act.

5. The inspection report was forwarded to the Assessing Officer who had issued revision notice dated 31.10.2016, furnishing all the relevant details and stating that the petitioner has violated the provisions of Section 3(4) of the TNVAT Act from the year 2014-15 onwards and they were not eligible to file monthly returns in Form K for the said Assessment years 2010-11 to 2015-16 upto 29.12.2015. There was a deficit of stock and owing to all these discrepancies, the respondent proposed to revise the petitioner's total and taxable turnover, apart from proposing to impose penalty. The petitioner submitted their objections dated 28.11.2016 alleging that they did not have adequate opportunity to put forth their submission and the proposal is clearly arbitrary and unsustainable. The respondent, after considering the objections, rejected the same and passed the impugned Assessment Order. The sheet anchor of the petitioner's contention is that the alleged ratio between the purchases and sales is very high, abnormal and impossible to be accepted and the respondent could

not have clubbed all the purchases and sales for the period from 2011-12 to 2015-2016 in a single Assessment year 2015-16. Further, the petitioner ought to have been given adequate opportunity to rebut the alleged discrepancies found on verification from the department website and the respondent, being Assessing Officer, should not have solely guided by the report submitted by the Enforcement Wing officials.

6. The respondent has filed a counter affidavit seeking to sustain the impugned assessment and has narrated in Paragraph 8 therein as to how the petitioner had fraudulently evaded tax by showing a meager turnover so as to pay 0.5% tax by showing as if its turn over is within Rs.15 lakhs per annum, when purchases were running to several lakhs per year. It is further submitted that but for the inspection which was conducted, the facts would not have come to light and the impugned Assessment Order is perfectly valid and if the petitioner is aggrieved, they should have filed an appeal as against the impugned Assessment order. It is further stated that the assessment for the year 2010-11 to 2015-16 are not made in a composite manner and the present assessment is exclusively made for the Assessment year 2015-16.

7. After hearing the learned counsel for the parties and carefully perusing the material placed on record, two factors emerge from the impugned Assessment Order. The first one is the fact that the petitioner had filed a revised return on 21.12.2015 upto October 2015. Admittedly these revised returns were made much prior to the inspection done by the Enforcement Wing officers which was carried out in the business premises of the petitioner on 29.12.2015 and 30.12.2015. Therefore, the respondent ought to have considered the revised return for the said period. The revised returns filed by the petitioner for November 2015 and December 2015, which was received by the respondent on 01.12.2016, could not have been considered in view of the legal embargo under Section 7(9) r/w.Section 19(11) of the TNVAT Act. However, what I find from impugned Assessment Order is that the Assessing Officer has taken the material from the reports submitted by the Enforcement Wing officials who have come to a conclusion that the petitioner had been suppressing the sales from 2010-11 onwards and that appears to have been taken as a base figure. However, what I find is that the said alleged purchase suppression said to have been made from 2010-11 to 2015-16, could not have been clubbed together and brought on record for the Assessment year 2015-16 and making the petitioner liable for payment of tax for the single assessment year 2015-16. It would have been a different matter if the respondents have considered the modus operandi adopted by the petitioner and

then made an assessment for 2015-16. What has happened in the present case is that the respondent has taken total purchase from 2010-11 to 2015-16 and assessed the petitioner to tax in a single Assessment year 2015-16. Therefore, to that effect, there is an error in the Assessment Order. However, taking note of the factual situation, this Court is not inclined to grant full relief to the petitioner as the petitioner have not been truthful in disclosing the actual sales effected by them, despite the fact that huge purchases have been done by them for several years. If the petitioner was not entitled to file returns in Form K from 2014-15 onwards, it is a good ground for revising such assessments, provided the same is within the period of limitation. Thus, for the above reasons, this Court is of the view that the ends of justice would be met if the petitioner is granted one more opportunity and simultaneously, safeguarding the interest of the revenue.

8. Accordingly, there will be a direction to the petitioner to pay 15% of the disputed tax i.e., 15% of Rs.1,33,23,823/- within a period of six weeks from the date of receipt of a copy of this order either in lump sum or in installments . If the petitioner complies with the condition, the petitioner will be permitted to treat the impugned Assessment Order as show-cause notice and submit their further objections and establish their case before the Assessing Officer and if such objections are filed, the Assessing Officer shall afford an opportunity of personal hearing and redo the assessment in accordance with law. If the petitioner fails to comply with the condition imposed by this Court, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed without further reference to this Court leaving it open to the respondent to proceed further in accordance with law.

The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

The Assistant Commissioner (CT),
Ambur Assessment Circle,
Ambur.

+1 CC to Special Government Pleader (Taxes) SR.NO.77261
+1 CC to M/s. P.Rajkumar Advocate SR.NO.76787

WP No.7552 of 2017 &
WMP No.8234 of 2017

SS(CO)
VC (22/11/2017)