In the High Court of Judicature at Madras

Dated: 22.03.2017

Coram

The Honourable Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.5652 of 2017
and
W.M.P.No.6035 of 2017

M/s.Bombay E-store India Private Limited,
Rep. By its Director Ms.Kalpana Murji Patel,
No.9, Hazari Street, Woods Road,
Chennai 600 002.
.... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
PAPJM Buildings, Greams Road,
Chennai 600 006. ...Respondent

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the respondent in TIN 33240600923/2012-13 dated 27.01.2017 and the consequential order in TIN 33240600923/2012-13 dated 21.02.2017 quash the same and further direct the respondent to grant an reasonable opportunity including personal hearing as mandated under section 22(4) of the Tamilnadu Value Added Tax Act 2006 hereinafter referred to as the Act and thereafter pass order in accordance with law.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved against the order dated 27.01.2017 passed under Section 22(3-A) of the Tamilnadu Value Added Tax Act, 2006 and the order passed under Section 84 of the TN VAT Act, 2006, rejecting the request of the petitioner to revise the assessment passed already on 27.01.2017.

2.The case of the petitioner is as follows:

The petitioner is a private limited company consisting of the petitioner's late husband and the petitioner as its directors. The entire business was carried on by the petitioner's husband, who passed away in the year 2016 and thereafter, the entire operations of the petitioner comes to standstill. Whileso, the impugned order dated 27.01.2017 was issued on the petitioner. The rectification petition filed by the petitioner under Section 84 also came to be rejected by the other impugned order dated 21.02.2017. The impugned orders are totally erroneous not only on the ground of violation of the principles of natural justice and also on the ground of lack of jurisdiction under Section 22(3-A) of the said Act. When the petitioner has filed monthly returns from November 2012-March 2013 and declared the total and taxable turnover and based on the returns so filed, when the turnovers were deemed to have been assessed under the TNVAT Act, 2006, the respondent is not entitled to invoke power under section 22(3-A) of the said Act, since such provision of law was inserted by the TNVAT Act No.13 of 2015 was given effect to only on 29.01.2016. As the petitioner was deemed to have been assessed under Section 22(1) of the said Act, invoking of provision under section 22(3-A) is not at all warranted. Further, for imposing penalty under Section 22(4) of the said Act, the petitioner must be put on notice before doing so. The respondent has failed to issue any such notice to the petitioner and therefore, the imposition of penalty suffers on the ground of violation of the principles of natural justice, even assuming that the petitioner is having jurisdiction to invoke Section 22(3-A).

3.Counter affidavit is filed by the respondent wherein it is stated that the writ petitioner has filed monthly returns in Form I from the months November 2012 to March 2013 and the same had been accepted as deemed assessment as required under section 22(2) of the Tamilnadu VAT Act, 2006. It is further stated in the counter that after scrutiny of the same and in view of the insertion of Section 22(3-A) of the TNVAT Act, necessary notices have been issued to the petitioner on 28.11.2016 and 26.12.2016. It is stated that the petitioner has not chosen to give any response which has resulted in passing the revised assessment order.

4.Mr.V.Sundareswaran, learned counsel for the petitioner, after inviting this court's attention to the relevant provision viz., 22(3-A), has submitted that the respondent has exceeded his jurisdiction in invoking such provision, when the said provision was inserted only with effect from 29.01.2016, by which time, the assessment has been completed as a deemed assessment.

5.Learned Government Advocate appearing for the respondent submitted that the authority has rightly invoked Section 22(3-A), which empowers him to call for the books of accounts, registers and records for the purpose of assessment and therefore, the petitioner cannot raise the question of jurisdiction.

6.Heard both sides.

7.The dispute between the parties is in respect of the Assessment Year 2012-2013. It is not in dispute that the petitioner filed the monthly returns in Form I for the months from November 2012 to March 2013 and also declared the total turnover of Rs.26,55,747/- and taxable turnover of Rs.23,58,585/-. It is also admitted by the respondent in the counter affidavit that such monthly returns filed by the petitioner were accepted as deemed assessment as required under Section 22(2) of TN VAT Act, 2006. Therefore, it is the admitted position that on the date of passing the impugned order, already the returns submitted by the petitioner as early as in the month of November 2012-March 2013 were accepted as deemed assessment. At this juncture, it is useful to refer to the relevant provision viz., Section 22(1)(2) of the TNVAT Act, 2006, which reads as follows:

> "22.Deemed assessment and procedure to be followed by assessing authority:-
>
> (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.
>
> (2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year."

8.Perusal of the above provision would amply make it clear that if the returns are in the prescribed form accompanied with prescribed documents and proof of payment of tax, every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year.

9.Therefore, the next question that would arise is as to whether the respondent is justified in invoking Sub Section (3-A) of Section 22 for passing the order impugned in this writ petition. For proper appreciation of the said issue, it is better to read the above provision extracted as hereunder:

> "22.Deemed assessment and procedure to be followed by assessing authority:
>
> (3-A) Notwithstanding anything contained in sub-section (2), the casual traders and dealers in respect of whom the relevant assessment year is the first or the last year of business, shall be assessed on the basis of the scrutiny of the returns with reference to

the books of accounts, registers, records and any other document and on such enquiry as the assessing authority may consider necessary."

9.A careful perusal of the said provision would show that it is inserted by the Tamilnadu Act 13 of 2015 with effect from 29.01.2016, that too, in the cases of casual traders and dealers in respect of whom the relevant assessment year is the first or the last year of the business. Further perusal of the above said provision would make it abundant clear that it is not intended for revising the assessment already made under Section 22(2) and on the other hand, it was intended for the purpose of making the assessment itself in respect of casual traders and the dealers in respect of whom the relevant assessment year is the first or last year of business, on the basis of scrutiny of books of accounts, registers and records. In this case, when the Assessing Officer has found that the returns were submitted by the petitioner in respect of the above months and based on those returns a deemed assessment had also taken place, I am of the view that there is no scope for invoking of Section 3-A for revising the assessment thereafter.

7.Even otherwise, when the above said provision itself was inserted with effect from 29.01.2016 and in the absence of any express provision indicating its retrospective application, the respondent is not justified in invoking such provision in respect of the Assessment Year 2012-2013, for which assessment is already over as deemed assessment under section 22(2). Therefore, I am of the view that impugned order passed under Section 22(3-A) of the above said Act cannot be sustained for want of jurisdiction. Accordingly, the writ petition is allowed and the impugned orders are set aside. No costs. The connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
PAPJM Buildings, Greams Road,
Chennai 600 006.
+1 CC to Mr.V.Sundareswaran , sr 17900
+1 CC to The Spl. Govt. Pleader sr 18346

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