

In the High Court of Judicature at Madras

Dated: 24.02.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition Nos.4723 and 4724 of 2017
and WMP Nos.4947 and 4948 of 2017

M/s.Auto Parts Stores
rep. by its Proprietor
No.20, Anna Salai,
Thiruvannamalai

Vs

..... Petitioner in both W.Ps

Commercial Tax Officer,
Assistant Commissioner (CT),
Tiruvannamalai.

..... Respondents in both W.Ps

PETITIONS filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent and quash the assessment proceedings in TIN No.33884520147/2012-13 & 2013-14 dated 10.02.2017 and direct the respondent to pass fresh orders as per Section 40(2) of TNVAT Act by providing an opportunity of personal hearing as required under Section 22(4) of TNVAT Act.

For Petitioner : Mr.C.Baktha Siromoni
For Respondents : Mr.S.Kanmani Annamalai, AGP

सत्यमेव जयते
O R D E R

1. Issue notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondent.

1.1. With the consent of counsels for parties, the Writ Petitions are taken up for final hearing and disposal.

2. These are Writ Petitions, which pertain to Assessment Years (A.Y.s) 2012-13 and 2013-14.

3. By virtue of the captioned Writ Petitions, challenge is laid to two (2) separate orders of even date, i.e., 10.02.2017. The rationale given in the two (2) assessment orders is similar.

3.1. Thus, apart from the figures pertaining to taxable turnover, tax and penalty imposed, by virtue of the impugned orders, the reasoning contained in two (2) impugned orders is identical.

4. In so far as A.Y.2012-13 is concerned, the respondent has pegged the taxable turnover at Rs.46,39,076/-. Tax has been imposed at the rate of 14.5%. The tax demanded, after requisite adjustments towards tax, is a sum of Rs.6,49,471/-. The penalty imposed is equivalent to a sum of Rs.9,74,206/-.

4.1. In so far as the A.Y.2013-14 is concerned, the taxable turnover has been crystallised at Rs.49,62,800/-. The said taxable turnover is taxed at the rate of 14.5%. Accordingly, a sum of Rs.6,94,792/- is demanded, after requisite adjustments qua tax paid is made. Penalty has been imposed at the rate of 150%, which is quantified at Rs.10,42,188/-.

5. The rationale contained in the impugned orders, for imposing tax and penalty on the petitioner, is that, the petitioner had opted to pay tax under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act'), by filing monthly returns in Form K and therefore, the petitioner was paying tax at the rate of 0.5%.

5.1. The respondent, thus, noted in the impugned orders that since, the petitioner had opted to pay tax under Section 3(4) of the 2006 Act, it could not have collected tax for the sales effected by it, and since, there was a violation of the conditions contained under Section 3(4) of the 2006 Act, the petitioner was not eligible for payment of tax at the rate of 0.5%.

5.2. Accordingly, the respondent proceeded to tax the entire sales turnover, under Section 3(2) of the 2006 Act, at the rate of tax, provided under Part C, First Schedule of the 2006 Act.

5.3. For this purpose, recourse was taken to Section 22(4) of the 2006 Act.

6. Mr.Baktha Siromoni, who appears for the petitioner, concedes that, the petitioner had made a mistake in collecting tax on the sales effected by the petitioner.

6.1. Learned counsel accepts that the petitioner had collected tax, in the sum of Rs.55,781/- in A.Y.2012-13; while in A.Y.2013-14, a sum of Rs.50,075/- was collected towards tax.

6.2. Learned counsel, however, says that the impugned orders are flawed for the following reasons:

6.3. Notwithstanding the mistake made by the petitioner,

albeit, inadvertantly, in collecting tax on the sales effected by it, the flaws, according to the petitioner, were as follows:

6.4. No opportunity of personal hearing was given to the petitioner before the respondent proceeded to trigger the provisions of Section 22(4) of the 2006 Act.

6.5. The mistake, if any, could have been dealt with, by taking recourse to the provisions of Section 40(2)(i) or 40(2)(ii) of the 2006 Act, depending on, whether the amounts were collected bonafidely or wilfully or knowingly, that they ought not to be collected.

7. Mr.Siromoni, says that the petitioner, therefore, would be willing to deposit the tax, which was collected, inadvertantly, on the sales effected by it for the relevant assessment years, i.e., A.Y.s 2012-13 and 2013-14.

8. Mr.S.Kanmani Annamalai, on the other hand, says that a show cause notice was issued to the petitioner, to which, no objections were filed and, therefore, the Respondent/Assessing Officer, proceeded to confirm the proposals made therein. In other words the submission of Mr.Siromoni, that no opportunity was granted, as is required under Section 22(4) of the 2006 Act was not tenable.

8.1. However, in so far as the argument advanced by Mr.Siromoni that for the alleged infraction, recourse, if any, could have been taken to the provisions of Section 40(2)(i) or 40(2)(ii) of the 2006 Act, it was conceded by Mr.Annamalai, that these were, perhaps, the only provisions, which were available to the respondent/Assessing Officer.

9. Learned counsel, however, says that these are aspects, qua which, alternate remedy is available to the petitioner, which could be accessed, in the facts and circumstances of the present case.

10. I have heard the learned counsels for the parties and perused the records.

11. According to me, the fact that, no opportunity of personal hearing was given to the petitioner, before the Respondent/Assessing Officer proceeded to pass the impugned orders, as is required under Section 22(4) of the 2006 Act, itself impregnates the impugned orders with a flaw, which would be sufficient for triggering the jurisdiction of this Court under Article 226 of the Constitution.

11.1. Therefore, the fact that an alternate remedy is available to the petitioner, will not, come in the way of this Court in interfering with the impugned orders.

12. This apart, Mr.Annamalai, as indicated above, has conceded that the provisions, which could have been taken recourse to by the Respondent/Assessing Officer, in the given facts and circumstances, were only Section 40(2)(i) or 40(2)(ii) of the 2006 Act. Therefore, if one were to have regard to the said provisions, the tax and penalty imposed via the impugned orders is way above what the 2006 Act provides.

12.1. Since, in any event, Mr.Siromoni, on his own volition, albeit, on behalf of the petitioner, has stated that the tax collected, though, inadvertantly, during the relevant assessment years, would be deposited, I see no reason not to direct the Respondent/Assessing Officer to redo the assessment.

13. Mr.Siromoni affirms that, the petitioner, will, therefore, deposit the sum of Rs.1,05,856/-, i.e., the tax for the relevant assessment years, within one (1) week of the receipt of a copy of the order.

14. Accordingly, the impugned orders are set aside. The Respondent/Assessing Officer is directed to redo the assessment and while doing so, will take into account, the tax deposited by the petitioner.

14.1. The Respondent/Assessing Officer will also be at liberty to determine, as to whether, the petitioner's case would fall under the provisions of Section 40(2)(i) or Section 40(2)(ii) of the 2006 Act.

14.2. Needless to say, the said exercise will be carried out, as expeditiously as possible, though, not later than four (4) weeks from the date of receipt of a copy of the order.

15. The Writ Petitions are, accordingly, disposed of in terms of the aforesaid directions. Consequently, connected Miscellaneous Petitions are closed. However there shall be no order as to costs.

Sd/-

Asst.Registrar

/true copy/ जयते

Sub Asst. Registrar

Commercial Tax Officer,
Assistant Commissioner (CT),
Tiruvannamalai.

+1cc to Special Government Pleader (T) Advocate SR.NO. 12179

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SAI (CO)
VR(2/03/2017)