In the High Court of Judicature at Madras

Dated : 04.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.477 and 478 of 2017 & WMP.Nos.510 & 511 of 2017

Mathi Diesel Service, rep.by its
Proprietor M.Sugavaneswaran ...Petitioner

Vs

The Commercial Tax Officer,
Salem Town West Circle, Salem. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent herein in TIN : 33802824049/2013-14 and 33802824049/2014-15 dated 14.12.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner filed their returns for the assessment years 2013-14 and 2014-15 belatedly. The explanation given is that on account of the death of the brother of the proprietor, the petitioner firm could not file the returns for the said assessment years immediately.

2. The respondent accepted the returns and levied a composition fee of Rs.2,000/- for each assessment year as per Section 72(1)(b) of the said Act. After accepting the returns, the respondent initiated proceedings for disallowing the claim of input tax credit and at the same time, treated the turnover of purchase as suppression and estimated the sales out of the said purchases and again the respondent treated the sales turnover reported in the returns as suppression. At that stage, the petitioner filed W.P.No.32153 of 2016 challenging the order of assessment dated 30.8.2016 for the year 2014-15 on the ground that the respondent granted only five days' time, which was insufficient to file their objections to the pre-revision notice dated 08.8.2016 and that without affording reasonable time, the assessments have been finalized ex parte.

3. For the assessment year 2013-14, the petitioner filed W.P.No.30686 of 2016 raising similar contention and this Court found that 15 days' time would be reasonable to submit their objections. Accordingly, W.P.No.30686 of 2016 was disposed of on 02.9.2016.

4. By taking note of the order dated 02.9.2016 in W.P.No.30686 of 2016, W.P.No.32153 of 2016 was disposed of on 15.9.2016 by directing the petitioner to treat the assessment order dated 30.8.2016 (AY 2014-15) as a show cause notice and submit their objections within 15 days and further

directed the respondent to redo the assessment after affording an opportunity of personal hearing. This direction has been complied with and ultimately, the impugned orders have been passed. Once again, the petitioner is before this Court challenging the impugned orders and the present challenge is on a technical and legal ground.

5. Mr.N.Inbarajan, learned counsel for the petitioner submits that there cannot be a best judgment assessment once the returns in Form E-1, filed belatedly, have been accepted and acted upon. In such circumstances, the Assessing Officer has no jurisdiction to make an estimation in respect of the purchases and sales duly reflected in the returns and accounts, which is against the settled legal principles. It is further submitted that the respondent having accepted the turnover as per the books and as per the returns, there is no justification to make a best judgment assessment or proceeding to reassess as an escaped assessment. According to him, in the absence of a finding of wilful non disclosure, levy of penalty invoking Section 27(3)(c) of the said Act does not arise.

6. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, by referring to the counter filed by the respondent, submits that the petitioner filed the returns only after an inspection was conducted and that the Assessing Officer was justified in making the estimation, as, in this case, it has come to light only after the inspection conducted by the Enforcement Wing Officials and that therefore, it is also an escapement of turnover.

According to the learned Additional Government Pleader, the respondent was justified in invoking the powers under Section 27(1)(a) of the said Act where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the Assessing Officer may determine to the best of judgment, the turnover so escaped. In the instant case, but for the inspection conducted, the turnover would have escaped assessment. Therefore, the learned Additional Government Pleader submits that the Assessing Officer was justified in passing the impugned orders to safeguard the interests of the Revenue.

7. Heard the learned counsel for the parties and perused the materials placed on record.

8. The issue, which falls for consideration in the instant case, is as to whether the impugned orders of assessment making a best of judgment assessment after the returns were filed, were just and proper.

9. It is not in dispute that the returns for the relevant assessment years were filed by the learned counsel for the petitioner after the inspection was conducted in the place of business of the petitioner. However, the fact remains that the respondent accepted the belated returns by exercising its powers in levying a composition fee of Rs.2,000/- for each assessment year in terms of Section 72(1)(b) of the said Act. On such returns being accepted after the levy of composition fee, it goes without saying that such returns, for all the practical purposes, shall be the returns and deemed to have been

presented within the time permissible for the relevant assessment year. Therefore, the respondent - Assessing Officer cannot harp upon the fact that the returns were filed much after the inspection was conducted by the Enforcement Wing Officials.

10. In such circumstances, it has to be seen as to whether a best of judgment could have been made. This issue has been answered by the Hon'ble Division Bench of this Court in the case of ***A.Ponnusamy Vs. Government of Madras [1968 (Vol.21) STC 71].*** The question, which arose for consideration before the Hon'ble Division Bench was as to whether the Tribunal's view that the estimate of turnover of sales can be based both on the estimated suppressed purchases and estimated suppressed sales is correct. In the said case, as a result of discovery of certain books from a sugar broker, the Department discovered suppression of purchases and sales of sugar. Some of those transactions were found to have been entered into with out-of-State dealers. In applying best judgment, the Revenue added to the turnover on the basis of suppressed purchases and also on the basis independently of suppressed sales. The Tribunal found the order to be correct. The Division Bench held that the Tribunal's view cannot be supported and held that when purchases have been made and have not been shown in the accounts and sales have been made, which did not find place in the accounts, it may be reasonable to assume that the goods covered by such sales to the extent possible came from the goods purchased, but not

disclosed. Therefore, the Division Bench opined that it is only excess sales not covered by purchases that can be added.

11. The above decision would be squarely applicable to the facts of the present case and there could not have been an estimate of turnover without any material especially when the returns filed by the petitioner, though belatedly, have been accepted by the respondent. For the above reasons, the assessment orders call for interference.

12. Accordingly, the writ petitions are allowed and the impugned orders of assessment are set aside. The matters are remitted back to the respondent for a fresh consideration and the respondent shall examine the returns filed by the petitioner, afford an opportunity of personal hearing and redo the assessment in accordance with law, bearing in mind the above legal principle. No costs. Consequently, the above WMPs are closed.

04.9.2017

Internet : Yes

To

The Commercial Tax Officer, Salem Town West Circle, Salem.

RS

T.S.SIVAGNANAM,J

RS

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