IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8919 of 2017 & W.M.P.No.9838 of 2017

Tvl. Sakthi Starch Factory,
Rep. by its Proprietor, K.Athiyappan,
No.4/494, Kandappa Colony,
Annathanapatty, Salem-2. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Annathanapatty, Salem. ...
Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent in CST No.403998/2007-08 dated 20.01.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by the Hon'ble Supreme Court of India in the judgment reported in (2004) 134 STC page 473 (Ashok Leyland Limited vs. State of Tamil Nadu and another).

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.Narmadha Sampath,
Special Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner, Ms.Narmadha Sampath, learned Special Government Pleader appearing for the respondent and carefully perused the materials placed on record including the para wise comments furnished by the respondent to the learned Special Government Pleader vide letter dated 13.07.2017, which is in the form of draft counter affidavit.

2.The petitioner is aggrieved by the impugned order dated 20.01.2017, passed under the provisions of the Central Sales Tax Act, 1956 (in short "CST Act") for the assessment year 2007-08, by which the respondent has held that the Form F Declarations filed by the petitioner were invalid and he has treated the transactions as direct interstate sales not covered by 'C' Forms and assessed the turnover under Section 8(2) of the CST Act.

3.Though the learned counsel for the petitioner has elaborately argued the matter contending that there is a finality attached to the sanctity of Form F Declarations and relied on decisions in the case of "**M/s.Rajam Offset Printers, Madras-1, v. CTO, Mannadi East Asst. Circle, Madras-1** reported in **1995 (8) M.T.C.R 55, Ashok Leyland Ltd., v. State of Tamil Nadu and another** reported in **(2004) 134 STC 473, V.Selladurai v. Chief Commissioner of Income-Tax (OSD) and another** reported in **(2007) 295 ITR 303 (Mad), Steel Authority of India Ltd., v. Secretary, Finanace Department, Government of Karnataka and others** reported in **(2007) 10 VST 451(CSTAA-New**

Delhi) and **M/s.Vasanthi Automobiles v. Commercial Tax Officer-II, Puducherry,** in **W.P.No.4974 of 2010,** dated 09.04.2010", this Court is not inclined to consider all those contentions as the petitioner has failed to submit their objections to the revision notice dated 15.12.2016. Thus, the petitioner cannot be permitted to agitate factual issues, which the petitioner ought to have raised before the Assessing Officer. The explanation, which is given before this Court for not submitting objections to the notice dated 15.12.2016 is by stating that the proprietor of the petitioner is aged about 80 years and on account of ill health and other issues, he was unable to promptly submit their objections. Though it may be true that the proprietor of the petitioner may be a senior citizen but, still when a business is being carried on, there is a statutory application on the dealer to file monthly returns and whenever there is a revision notice, objections should be raised within the time permitted.

4.Learned Special Government Pleader submitted that it is not as if the respondent cannot re-open the assessment, but the respondent has amble jurisdiction to re-open the assessment under Section 6-A(3) of the CST Act, in the light of the insertion of Sub-Section 8 to Section 6A with effect from 08.05.2016. Therefore, it is submitted that the revision notice issued by the Assessing Officer is well within his jurisdiction.

5.In my considered view, the stage has not come for this Court to test as to whether the re-opening was justified or not, since the petitioner has failed to submit their objections, consequently, the proposal in the revision notice has been confirmed, which is in the nature of an ex-parte decision. Considering the peculiar facts and circumstances of the case that the impugned assessment order having been passed as early as on 20.01.2017 and the matter is still languishing before this Court, this Court is of the view that one more opportunity can be granted to the petitioner to go before the Assessing officer, raising all factual and legal contentions.

6.Thus, for the above reasons, without expressing any opinion on the merits of the matter, there will be a direction to the petitioner to treat the impugned assessment order dated 20.01.2017 as a show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order. In the objections being raised, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

14.09.2017

Index:Yes/No
abr

To

The Assistant Commissioner (CT),
Annathanapatty, Salem.

T.S.SIVAGNANAM, J.

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