In the High Court of Judicature at Madras

Dated : 05.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.31407 of 2017 & WMP.No.34538 of 2017

M/s.Kishore Industries, rep.by
its Proprietor Mr.S.Sathish ...Petitioner

Vs

1.The State of Tamil Nadu, rep.by
its Secretary to Government,
Department of Commercial Taxes,
Fort.St.George, Chennai-9.

2.The Commissioner of Commercial
Taxes, II Floor, Ezhilagam,
Chennai-5.

3.The Assistant Commissioner (CT)
(FAC), Selaiyur Assessment Circle,
Chennai-73. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the third respondent dated 23.10.2017 in his TIN 33210945338/2011-12 received by the petitioner on 01.11.2017, quash the same and direct the third respondent to rectify the error apparent on the face of the record for the assessment year 2011-2012 and pass fresh order.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a dealer in TIN containers and is an assessee on the file of the third respondent under the

provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. A pre-assessment notice dated 13.3.2015 was issued to the petitioner stating that in the books of accounts produced by them on 09.2.2015, on verification, certain discrepancies were noted. Therefore, the third respondent proposed that suppressed turnover is to be assessed at 5% besides levying penalty at 50% of the tax due. It was further stated in the pre-assessment notice that on verification of the assessment records, it revealed that the petitioner effected inter-State purchases during the year 2011-12 and availed input tax credit and that the same is to be recovered under Section 19(5)(b) of the said Act. It was also proposed to levy penalty at 150% on the alleged wrong availment of the input tax credit.

4. The petitioner was directed to file their objections to the proposal on or before 25.3.2015. As directed, the petitioner filed their objections on 10.4.2015 pointing out that in the balance sheet produced, their total purchases had been shown as Rs.3,40,70,178/-, which included purchase of machinery, consumables, wages and purchase of car and that those purchases and wages could not be treated as actual purchases for trading, as the petitioner is a manufacturer of TIN containers. They also submitted a copy of the correct balance sheet declaring purchases and sales and other details. The petitioner also furnished figures relating to purchases for the year 2011-12. Further, with regard to the inter-State purchases, it was stated that they had duly reported the same in Annexure I and a copy of Form I return was also enclosed. It was also categorically stated that they had not availed any input tax credit on inter-State purchases and that they claimed input tax credit only on local purchases in Form I return. An abstract for the local and inter-State purchases was enclosed and the petitioner requested for dropping the proposal in the notice dated 13.3.2015.

5. However, the third respondent passed the assessment order dated 29.4.2015 for the said year namely 2011-12 confirming the proposal in the pre-assessment notice. On receipt of the copy of the order dated 29.4.2015, the petitioner found that there were certain errors in the assessment order and filed a petition dated 27.7.2015 under Section 84 of the said Act and requested to revise the assessment order.

6. Since the petition dated 27.7.2015 was not considered, the petitioner approached this Court by way of a writ petition in W.P.No.23810 of 2015, which was disposed of by order dated 05.8.2015 by directing the third respondent herein to decide the petition under Section 84 of the said Act and till orders were passed, no coercive action should be initiated against the petitioner, pursuant to which, a notice dated 26.7.2017 was issued, followed by the notices dated 18.9.2017 and 04.10.2017

for personal hearing. Further, the petitioner, by representation dated 29.9.2017, requested for change of date of personal hearing, which request appears to have been accepted and the petitioner filed another representation dated 16.10.2017 containing certain annexures, which include copies of the monthly returns, a copy of trading profit and loss account and a copy of CST ledger.

7. After hearing the petitioner, the impugned order has been passed. In paragraph 7 of the impugned order, the third respondent, while considering the trading profit and loss account filed by the petitioner, stated that the petitioner is in the habit of preparing trading profit and loss account declaring the turnover suiting their requirements and that there was no proper explanation forthcoming in filing different profit and loss accounts in all the above three occasions. Ultimately, the third respondent opined that there was no ground to revise the assessment order and accordingly, the petition filed under Section 84 of the said Act was dismissed by the impugned order.

8. Admittedly, as against the impugned order, the petitioner has a revisional remedy before the Joint Commissioner of the concerned jurisdiction. Without approaching the said Authority, the petitioner filed this writ petition.

9. The petitioner's case is that without perusing the records, the third respondent passed an order and that there is no discrepancy in the three profit and loss accounts and in fact, the third respondent himself stated that in all the three trading accounts, sales figures were uniformly declared as Rs.3,43,28,797/-. Therefore, had the records been verified, the third respondent would have rectified the assessment.

10. In my considered view, the issues, which have been raised by the petitioner, can very well be canvassed before the Revisional Authority. This is so because the Revisional Authority can examine as to whether the petitioner is factually correct without being solely guided by the fact that the petitioner produced three sets of accounts. The appropriate manner, in which, the issues should be addressed is to direct the third respondent to peruse the original records, cull out details and examine as to whether the order of assessment dated 29.4.2015 requires modification or not. Therefore, this Court is inclined to direct the petitioner to approach the Revisional Authority instead of challenging the impugned order before this Court.

11. Accordingly, the writ petition is disposed of by directing the petitioner to file a revision petition before the concerned Joint Commissioner, who exercises jurisdiction over Selaiyur Assessment Circle, within 15 days from the date of

receipt of a copy of this order. While entertaining the revision petition, the Joint Commissioner shall take up the revision petition without entering into the question of limitation. After the revision petition is filed, the Joint Commissioner is directed to call for the original files, trading profit and loss accounts, examine the same, come to a conclusion as to whether the stand taken by the petitioner is justified or not and then decide as to whether the assessment order dated 29.4.2015 requires to be revised or not. The Revisional Authority is directed to conclude the proceedings after affording an opportunity of personal hearing to the petitioner within 30 days from the date, on which, the revision petition is filed. Till orders are passed by the Revisional Authority, no coercive action shall be taken by the third respondent against the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu, Department of Commercial
Taxes, Fort.St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chennai-5.

3.The Assistant Commissioner (CT) (FAC),
Selaiyur Assessment Circle,
Chennai-73.

4.The Section Officer,
E.R. Section,
High Court, Madras.

+1cc to Mr.M.Md.Ibrahim Ali, Advocate SR.No.85716
+1cc to Special Government Pleader(Taxes) SR.No.86133

WP.No.31407 of 2017&
WMP.No.34538 of 2017

NRI(CO)
GN(21/12/2017)