IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.21169 to 21171 of 2017
and
W.M.P.Nos.22061 to 22069 of 2017

M/s.New Saravana Stores Bramandamai,
rep.by its Partner - Y.Pondurai,
Nos.128, 129 and 130,
North Usman Road,
T.Nagar, Chennai-600 017. .. Petitioner in all the W.Ps.

Vs

The Assistant Commissioner (CT),
Pondy Bazaar Assessment Circle,
Chennai. .. Respondent in all the W.Ps.

W.P.No.21169 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN 33231523350/2013-14 dated 16.06.2017, quash the same as illegal and contrary to the scheme of the Act.

W.P.No.21170 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN 33231523350/2014-15 dated 16.06.2017, quash the same as illegal and contrary to the scheme of the Act.

W.P.No.21171 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN 33231523350/2015-16 dated 16.06.2017, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Ms.R.Hemalatha
For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent.

2.With the consent of the learned counsel on either side, the writ petitions are taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), has filed these writ petitions challenging the orders passed by the respondent dated 16.06.2017 rejecting the petitioner's applications filed under Section 84 of the TNVAT Act.

4.The petitioner was deemed to be assessed for the relevant assessment years under Section 22(2) of the TNVAT Act as on 31st October of the relevant years, viz., 31.10.2014, 31.10.2015 and 31.10.2016. Subsequently, the respondent issued a notice proposing to revise the assessments under Section 27 of the TNVAT Act on the basis of the alleged discrepancies culled out from the Audit Report in Form-WW along with the balance sheet and Trading and P & L Account. It was alleged that the petitioner has effected sale of cars during the years and the same were not reported in the monthly returns and the tax due @ 14.5% thereon has not been paid. With these allegations, a notice was issued by the respondent dated 13.01.2017. According to the petitioner, an inadvertent error has crept in regarding reporting of commodity under the 5% category pertaining to the sales of used cars taxable @ 5% and it was inadvertently coupled along with other commodities. Thus the petitioner claims that there were clerical errors not only in the returns filed but also in the Chartered Accountant's Certificate issued under Form-WW. Therefore, the petitioner filed petitions under Section 84 of the TNVAT Act stating that there is an error which is apparent on the face of the order, which needs to be rectified.

5.The petitioner contended that one of the partners of the petitioner, who was residing in Puducherry, purchased the cars in his own name and the vehicles were registered in the Union Territory of Puducherry and they were sold in Puducherry. The consideration for the purpose of sale alone was borne / favoured in the name of the petitioner / dealer who is in Tamil Nadu and registered on the file of the respondent. Therefore, it was contended that the residence of the partner was at Puducherry and the car was purchased from a dealer situated outside the State and the relevant tax was borne at the point of first sale and thereafter the sale of the used cars was effected by the partner to a dealer outside the State of Puducherry, which is an interstate sale simplicitor. Thus, it was contended that practically there was no jurisdiction for the sufferance of tax inside the State of Tamil Nadu. Further, the petitioner contended that the returns filed by the dealer disclosing the used car sales as taxable @ 5% was unwarranted and uncalled for and it is an inadvertent error crept in on the face of the record and the respondent has powers to rectify the same which will help considerably in reducing the unwarranted tax burden which is otherwise not payable. Therefore, the respondent was requested to revise the deemed assessments.

6.The applications filed by the petitioner were rejected after taking into consideration the merits of the allegations made by the petitioner and also on the point that error which is stated to have been crept in, in the deemed assessment orders is apparent on the face of the record and such mistake was pointed out by the Chartered Accountant who certified and filed the Form-WW as per Section 63-A of the TNVAT Act.

7.I have heard the learned counsel on either side and perused the materials placed on record. The first issue to be considered is whether the petitioner should be permitted to challenge the correctness of the impugned orders by way of writ petitions, when a revisional remedy is available as against the impugned orders before the Joint Commissioner (CT), Chennai (Central).

8.The learned counsel for the petitioner would submit that there is no jurisdiction to levy tax and therefore, the matter goes to the root of the assessments itself and when the error is apparent on the face of the record, it is well open to the respondent to rectify the error accepting the stand taken by the petitioner.

9.In the considered view of this Court, the contention raised by the petitioner to state that there is error apparent on the face of the record, is not purely a legal issue but a mixed question of fact and law. The respondent has noted that the income-tax certification was passed apart from the Audit Report and Form-WW duly signed by a Chartered Accountant and the contention raised by the petitioner that certification holds good only for the purpose of income-tax assessment is not acceptable. Prima facie, this Court is of the view that such a finding recorded by the respondent is correct. Nevertheless, the matter involves appreciation and re-appreciation of the factual position, especially when the deemed assessments have taken place at the instance of the petitioner who filed the returns duly supported by Form-WW Certificates by a Chartered Accountant. Therefore, this Court cannot embark upon a fact-finding exercise to examine the correctness of the stand taken by the respondent to ascertain as to whether there is an error apparent on the face of the record. Admittedly, the revisional remedy before the Joint Commissioner is not only effective but also an efficacious remedy. Since the matter involves levy of tax, and there is enactment governing the transactions which provides for hierarchy of remedies, the petitioner should not be permitted to by-pass such alternative remedy available to the petitioner.

10.Thus for the above reasons, the preliminary issue is decided against the petitioner and it is held that the writ petitions are not maintainable.

11.However, it is open to the petitioner to file revisions before the Joint Commissioner, Chennai (Central). It appears that the period of limitation is yet to be over. In any event, if the revision petitions are filed within a period of fifteen days from the date of receipt of a copy of this order, the same shall not be rejected by the Joint Commissioner on the ground of limitation.

12.With the above observation, the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

KM

To

The Assistant Commissioner (CT),
Pondy Bazaar Assessment Circle,
Chennai.
+ 1 cc to Special Government Pleader Sr.57521
+ 3 ccs to Mr.R. Hemalatha, Advocate Sr.57517

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EU 30.08.17