IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.3871 & 3872 of 2017 and
W.M.P.Nos.3933 & 3934 of 2017

M/s.Koyyah Brothers Agri Traders Private Limited,
Rep. By its Director, Mohammed Thameem,
Plot No.3068, Shanthi Colony,
Y Block, Anna Nagar,
Chennai - 600 030. ... Petitioner in both WPs.

Vs

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Dowlath Towers, 7th Floor,
Taylors Road, Kilpauk,
Chennai - 600 010. ... Respondent in both WPs.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the Respondent in TIN:33421025975/2012-13, TIN: 33421025975/ 2014-15 respectively, dated 29/12/2016, quash the same as illegal, arbitrary and unreasonable being without jurisdiction under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner in both Wps : Mr.V.Sundareswaran

For Respondents in both WPs : Mr.K.Venkatesh Government Advocate

COMMON ORDER

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2.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, is engaged in the business of import of heavy melting scrap. In these writ petitions, the petitioner has challenged the orders/notice passed/issued by the respondent dated 29.12.2016 by which, the applications filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 dated 18.11.2016 was rejected on the ground that the petitions do not involved any error apparent on the face of the record. This is the second time, the petitioner is before this Court in respect of the assessment years 2012-2013 and 2014-2015 under the Tamil Nadu Value Added Tax Act.

3.Earlier the petitioner filed W.P.Nos.41549 & 41550 of 2016 challenging the assessment orders for both the years dated 08.12.2015. When the case came up for hearing before this Court, I was not convinced about the conduct of the petitioner in not responding to the pre-assessment notice dated 03.11.2015 and therefore, dismissed the writ petitions as not maintainable, leaving it open to the petitioner to work out their remedies available under the Act. Pursuant to the same, the petitioner has approached the respondent by filing petitions under Section 84 of the Tamil Nadu Value Added Tax Act for both the assessment orders vide petitions dated 18.11.2016.

4.At this juncture, it is to be pointed out that the basis of the assessment itself was by sourcing some data from the Customs Department and alleging that the petitioner has effected import purchases from other countries to the value of Rs.1,02,69,325/-. What is interesting to note is that the allegation against the petitioner for both the assessment orders is identical and the proposal was identical and the tax which has been demanded from the petitioner in the assessment orders dated 08.12.2015 is also identical. It is rather strange as to how there could have been transactions for both the assessment orders for the same value and the turnovers could be identical especially in the light of the fact that the specific stand taken by the petitioner is that they have effected only two imports during the period 2012-2013, vide Bills of Entry dated 18.10.2012 and 19.02.2013 and the imported heavy melting scrap was sold to various dealers inside the State which were shown in their returns filed for the month of March 2013 and tax was paid on the said turnover and realised with the department on 20.01.2014. For the year 2014-2015, the petitioner made a specific averment that they have not done any import transactions during the year 2014-2015 and requested the respondent to furnish copies of import documents based on which the assessment has been made. The respondent by the impugned notice has rejected the petitions stating that there is no error apparent on the face of the record.

5.However, in the counter affidavit filed by the respondent in paragraph 5 therein, the respondent has accepted the fact that the tax has been remitted by the petitioner in respect of the sales done during March 2013. However, the respondent states that the manual return was filed during December 2013.

6.Be that as it may, the petitioner would state that the tax paid by them has been realised by the respondent on 20.01.2014. For the assessment year 2014-2015, though the petitioner has requested for copies of the import documents, the respondent has not furnished the same and has rejected the petition filed under Section 84 of the Tamil Nadu Value Added Tax Act stating that there is no error apparent on the face of the record. The power conferred on the respondent under Section 84(1) of the Act is a power to rectify any error apparent on the face of the record. The statute does not state that such power can be exercised only to correct arithmetical or clerical errors. The language employed in Section 84 of the Act would confer power on the authority to review its decision, if there is error apparent on the face of the record. Thus, the respondent should have passed a speaking order as to why he was convinced that there is no error apparent on the face of the record. It is not enough to refer to Section 84 and state that there is no error apparent on the face of the record. That apart, the respondent has not granted an opportunity of personal hearing to the petitioner which would have resolved the controversy especially in the light of the specific stand taken by the petitioner that except for two import transactions, they have not done any other transactions. Thus, for the above reasons, this Court is inclined to interfere with the impugned notice and remand the matter to the respondent for fresh consideration.

7.Accordingly, the Writ Petitions are allowed. The impugned orders are set aside on the grounds mentioned above and the matter is remanded to the respondent for fresh consideration in accordance with law, taking note of the legal principle set out in the preceding paragraphs. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

Sgl

To

The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Dowlath Towers, 7th Floor,
Taylors Road, Kilpauk,
Chennai - 600 010.

+2 C.C. to Mr.V.Sundareswaran Advocate SR.No. 71799

+1 C.C. to The Special Government Pleader SR.No. 71311

W.P.Nos.3871 & 3872 of 2017

T.R (16/11/2017)