IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGANANAM

W.P.No.10064 of 2004
and W.M.P.No.11739 of 2004

Tvl.Bojaraj Textile Mills Ltd., rep by
Director: M.K.Kaladhar Babu,
Sitalakshmi Mills Ltd. Premises,
Tirunagar, Madurai. .. Petitioner

Vs.

1.The Appellate Assistant Commissioner (CT),
Madurai (South),
C.T. Buildings, Madurai.

2.The Deputy Commercial Tax Officer,
Tirupparankundram Assessment Circle,
Madurai - 20. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in his proceedings in A.P.No.99 of 2002 dated 28.11.2003 and quash the same as illegal, arbitrary, unsustainable and against the principles of natural justice and further direct the 2nd respondent herein to pass a fresh order of assessment after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondents: Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard Mr.A.Chandrasekaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. The petitioner, who is a registered dealer on the file of the second respondent, has filed this writ petition challenging the order passed by the first respondent, the appellate authority, in an appeal petition filed by the petitioner in

A.P.No.99 of 2002 against the order of assessment under the provisions of the Tamil Nadu General Sales Tax Act, 1959, for the assessment year 1999-2000, dated 19.02.2002.

3. The only ground, on which the impugned order has been challenged, is by contending that the assessment was completed by the Assessing Officer, without looking into the books of accounts and on that ground, appeal was filed before the appellate authority. However, the appellate authority partly allowed the appeal and partly dismissed the appeal by confirming the findings of the Assessing Officer on certain grounds and in respect of others, remanding the matter. The reason for confirming certain portion of the orders of assessment is by stating that the authorized representative of the petitioner, who appeared before the first respondent did not raise any objections in respect of certain items and therefore, the same are sustained.

4. The petitioner in the affidavit filed in support of this writ petition has taken a specific stand in paragraph No.8 that his authorized representative/counsel did not make any such concession and he has disputed the entire order and stated that the Assessing Officer has not verified the books of accounts before passing the order. Further the petitioner would go to say that during the course of hearing of the appeal, it was expressed by the appellate authority that the matter will be remanded to the Assessing Officer in its entirety and only when they received the impugned order, they were shocked and to know that the appeal was partly allowed and partly dismissed.

5. In the para wise comments given by the appellate authority to the learned Government Advocate vide order dated 06.06.2004, the appellate authority appears to have taken a slightly different stand stating that the authorized representative has not produced any documentary evidence before the appellate authority and not argued those points and therefore, they were confirmed on merits.

6. This contention now raised by the Appellate Assistant Commissioner is contrary to the findings recorded by the Appellate Assistant Commissioner in page No.5 of the impugned order. Thus it appears to be an attempt to justify the action done earlier. In any event, the appellate authority did not make any elaborate exercise to refer to the books of accounts of the petitioner and such exercise, ought to have been left, to be done by the Assessing Officer, more so, when certain of the issues, the Assessing Officer has been directed to reconsider.

7. Thus for the above reasons, the writ petition is allowed and the impugned order is set aside in its entirety and the entire matter is remanded back to the Assessing Officer, who shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

vsm

To

1.The Appellate Assistant Commissioner (CT),
Madurai (South),
C.T. Buildings, Madurai.

2.The Deputy Commercial Tax Officer,
Tirupparankundram Assessment Circle,
Madurai - 20.

+1cc to Special Government Pleader (Taxes) sr.47634

+1cc to Mr.P.Radhakrishnan,Advocate sr.47579

W.P.No.10064 of 2004

ss(21/7/2017)