IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.26244 to 26247 of 2017
and
W.M.P.Nos.27903 to 27910 of 2017

M/s. Aakash Automobiles Pvt. Ltd.
rep.by its Director. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT)
Villupuram I Circle,
Villupuram, Villupuram District. ...Respondent in all W.Ps.

Prayer in all W.Ps.:-

Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the file of the respondent, vide impugned proceedings made in TIN No.33214682069/2012-13, 2013-14, 2014-15 and 2015-16 respectively, dated 15.02.2017 and to quash the same.

For Petitioner in all W.Ps. : Mr.A. Ravichandran

For Respondent in all W.Ps. : Mr.K.Venkatesh
Government Advocate

C O M M O N O R D E R

Heard Mr.A. Ravichandran, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the Government Advocate, accepting notice on behalf of the respondent. With the consent on either side, this Writ Petition is taken up for final disposal, at the stage of admission.

2. The petitioner is a dealer in Automobiles, and registered on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'the Act'). The petitioner has challenged the impugned assessment orders for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16 respectively.

3. The primary ground, on which, the impugned orders are challenged is by contending that, the same are passed in violation of principles of natural justice.

4. This Court posed a question to the learned counsel for the petitioner, as to why, the petitioner has not approached this Court earlier, as the impugned orders have been passed on 15.02.2017. It is submitted by the learned counsel for the petitioner that the impugned orders have been received by the petitioner only on 26.08.2017, and to support such a stand, the petitioner has produced a tracking information furnished by the Postal Department. On a perusal of the same, it is seen that the impugned orders have been received by the petitioner on 26.08.2017, and therefore, the petitioner is not guilty of delay and laches in approaching this Court.

5. This Court need not labour much to go into the correctness of the impugned orders, as identical order in respect of the assessment year 2011-12, dated 15.02.2017, was challenged by the petitioner, in W.P.No.18789 of 2017, and this Court, after considering the submissions on either side, allowed the said Writ Petition and remanded the matter for fresh consideration. On remand, the matter is now pending before the respondent.

6. The learned Government Advocate, on instructions from the respondent would submit that the delay in communicating the impugned orders is on account of the fact that the files were not traceable in the Office of the respondent, and after files were traced out, the impugned assessment orders have bee communicated to the petitioner. The learned Government Advocate, does not dispute the fact that, in respect of the assessment year 2011-2012, dated 15.02.2017, which is identical to that of the impugned orders herein, has been set aside and the matter has been remanded to the respondent for fresh consideration. The reason, based on which, the earlier Writ Petition, viz. W.P.No.18789 of 2017, was allowed by this Court, by order, dated 24.07.2017, is as follows:-

> " 7. However, one important factor, which appears to have been lost sight of by the Assessing Officer is that the present assessment is a revision of assessment, as the petitioner has been deemed to have assessed under Section 22(2) of the said Act for the relevant assessment year. Therefore, if it is revision of assessment under Section 27 of the said Act, the Assessing Officer, within the time stipulated under Section 27(1) of the said Act, may re-assess the tax due, after making such enquiry, as

it may consider the necessary. Apart from that, an opportunity has to be given to the dealer to show cause against the order of proposing revision.

8. Therefore, when the revision has been done under Section 27 of the said Act, then it is incumbent upon the Assessing Officer to consider the objections raised by the petitioner and cannot be merely guided by the report of the Enforcement Wing Officers. That apart, the present revision of assessment is based upon the information culled out from the Commercial Tax Department Website.

9. This court had considered as to how such re-assessments have to be done, when re-assessment are proposed based on the web page report and in the case of M/s.JKM Graphics Solutions Pvt Ltd and others Vs. Commercial Tax Officer, Vepery Assessment Circle and others reported in 2017(3) TMI 536, this Court had elaborately dealt with the issue and laid down certain guidelines for the Assessing Officers to follow. The sum and substance of the guidelines laid down is to conduct an enquiry wherein the other end dealer should also be present, for which purpose, the Assessing Officer is empowered to call for the details from the Assessing Officers of the other end dealers.

10. In the instant case, the petitioner has taken a specific stand, they had no business transaction with those seven dealers. Therefore, the petitioner cannot be called upon to prove the negative and essentially, the Assessing Officer should embark upon an enquiry and then come to a conclusion as to which of the statements are correct namely the stand taken by the petitioner or the details mentioned in Annexure II of the other end dealer. Having not undertaken such exercise, the impugned order calls for interference.

11. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the respondent for

a fresh consideration, who shall issue notice not only to the petitioner, but also to the other end dealers through the respective Assessing Officers, conduct an enquiry, thereafter re-do the assessment in accordance with law. No costs. Consequently, the above WMPs are closed. "

7. The above reasoning would hold good for setting aside the orders impugned in these Writ Petitions as well, as they are arising out of the same inspection conducted by the Official of the Enforcement Wing of the respondent/Department.

8. Thus, following the above order, dated 24.07.2017, passed by this Court, in W.P.No.18789 of 2017, the present Writ Petitions are allowed, the impugned orders are set aside, and the matter is remanded to the respondent for fresh consideration, who shall issue notice not only to the petitioner but also to the other end dealers, through the respective Assessing Officer, and conduct an enquiry and redo the assessment in accordance with law along with the assessment for the year 2011-12. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

sd/mrr

To

The Assistant Commissioner (CT)
Villupuram I Circle,
Villupuram, Villupuram District

+1 C.C. to Special Government Pleader[TAXES], SR.NO.72771

+4 C.C. to M/S. Advocate SR.NO. 72312 TO 72315

Writ Petition Nos.26244 to 26247 of 2017

T.R (27/10/2017)