IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13436 of 2006 & W.P.M.P.No.15006 of 2006

S.P.Gopalakrishan ... Petitioner

Vs.

1.Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Ezhilagam, Chennai-5.

2.Appellate Assistant Commissioner (CT),
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli-2.

3.Deputy Commercial Tax Officer,
Tirunelveli Town Assessment Circle,
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli-2. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records in A3/2150/95 dated 14.03.2005 on the file of the third respondent and quash the same and the order dated 06.05.2005 passed by the second respondent in appeal in K.Dis.896/2005 and the order dated 05.04.2006 passed by the first respondent in Revision petition in Pro.No.J1/74652/2005.

For Petitioner : Mrs.Chitra Gomathy

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mrs.N.Chitra Gomathy, learned counsel for the petitioner and Mr.K.Vekatesh, learned Government Advocate for the respondents.

2.The petitioner is before this Court challenging the demand notice issued by the third respondent dated 14.03.2005, which is consequence of the order passed by the second respondent dated 06.05.2005, confirming the order passed by the first respondent dated 05.04.2006.

3.The third respondent by order dated 10.05.1993, assessed the petitioner to tax under the Tamil Nadu Value Added Tax Act, 1959 (in short "TNGST Act") and against the said order of assessment, the petitioner preferred an appeal before the Appellate Assistant Commissioner in Appeal No.350 of 1993. The said appeal was allowed by order dated 15.12.1993, by setting aside the assessment order with a direction to the Assessing Authority to pass fresh orders after duly establishing that there were actual purchases of sugars and that sugars were used in the manufacturing of confectionery goods and the sale was suppressed from the Department. Though this order came to be passed on 15.12.1993, no action was initiated by the third respondent, after the matter was remanded to him for fresh consideration by issuing pointed directions.

4.It appears that when the petitioner made application for fresh registration in the year January 2000, the third respondent issued demand notice dated 16.02.2000, calling upon the petitioner to pay tax of Rs.1,59,003/-. From the material papers placed before this Court, it is evidently clear that after the matter was remanded by the Appellate Authority vide order dated 15.12.1993, no proceedings were initiated by the third respondent/Assessing Officer. The petitioner immediately submitted his objections on 09.03.2000 to the notice of demand dated 16.02.2000, for which the respondent passed an order dated 14.03.2005, rejecting the petitioner's objection by virtually a single line order and called upon the petitioner to pay the amount, failing which, the third respondent threatened action will be initiated under the Revenue Recovery Proceedings.

5.The petitioner immediately sent a reply through his lawyer. However, the third respondent did not close the proceedings. Therefore, the petitioner, by abundant caution filed an appeal against the said order before the Appellate Assistant Commissioner raising various factual and legal grounds. The Appellate Assistant Commissioner returned the appeal petition stating that such appeal petition is not entertainable under Section 31 of the TNGST Act. This order was put to challenge by the petitioner in W.P.(MD)No.8350/2005. The said writ petition was allowed and the petitioner was permitted to file revision before the first respondent. Accordingly a revision petition was filed on 02.03.2006, which was rejected by the impugned order dated 05.04.2006 on the question of maintainability, without going into the merits of the matter.

What is interesting to note is that the Assessing Officer did not comply with the direction issued by the Appellate Assistant Commissioner vide order dated 15.12.1993.

6.Therefore, if no fresh assessment proceedings were initiated by the third respondent, the question of demanding tax from the petitioner, who denied his liability does not arise. This apart, there is no explanation by the respondent as to why they did not initiate the proceedings from the year 1993 till 2000. Thus, for the above reasons, the demand of payment of tax from the petitioner is unsustainable. Hence this writ petition is allowed and the proceedings are quashed. No costs. Consequently, connected WPMP is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

abr

To

1.The Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Ezhilagam, Chennai-5.

2.The Appellate Assistant Commissioner (CT),
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli-2.

3.The Deputy Commercial Tax Officer,
Tirunelveli Town Assessment Circle,
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli-2.

+1cc to Mrs.Chitra Gomathy, Advocate in sr.no.69254

W.P.No.13436 of 2006

NR 22/11/2017