

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017

Coram

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

Writ Petition Nos.15808 of 2004
and
W.P.M.P.No.18769 of 2004

Ibrahim Metals,
Manufacturer of S.S. Vessels,
Represented by its Proprietor Mr.N.Nazar
1/40, Narasingam Road,
Y.Othakadai (Madurai District).

...Petitioner

Vs.

1. Deputy Commercial Tax Officer,
Melur. (Madurai District)
2. Deputy Commercial Tax Officer,
Enforcement Wing Dr.Thangaraj Road,
Ground Floor, C.T.Buildings, Madurai - 20.

...Respondents

This Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the pre-assessment notice dated 15.04.2004 issued by the first respondent in his proceedings in TNGST No.4940354/2000-01 and to quash the same.

For Petitioner : Mr.M.Md. Ibrahim Ali

For Respondents : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.M.Md. Ibrahim Ali, the learned counsel appearing for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate for the respondents.

2. The petitioner, who is a registered dealer on the file of the first respondent, under the provisions of Tamil Nadu General Sales Tax Act, 1959 has filed this Writ Petition, challenging the pre-assessment notice, dated 15.04.2004, by which, the first respondent proposed to revise the assessment for the year 2000-01. Two grounds have been raised by the petitioner, assailing the impugned notice. Firstly, by referring to the statement made in the impugned notice, that the accounts were produced and secondly, by referring to a contradictory statement in the very same impugned notice.

3. The learned counsel appearing for the petitioner has submitted that the respondent, in the impugned notice, has admitted the fact that the annual returns were filed, the accounts were also verified, and based on the date disclosed in the account, the turnover has been reported in the returns, however, while proposing to revise the assessment, it is stated that the petitioner/dealer did not take any pains to produce their accounts and prove the purchases alleged to have been effected from Bombay Dealers. Further, it is submitted that the question of liability under Section 7-A of the Act would not arise, as the petitioner is stated to have purchased defective stainless steels from Bombay against 'C' Form declaration. In the parawise comments, given by the respondent to the learned Government Pleader, the allegation made by the petitioner in the affidavit filed in support of the Writ Petition has been denied, but, there is no explanation as to why there were contradictions in the impugned notice.

4. However, since the matter is pending since 2004, this Court is of the view that the matter can be remanded to the first respondent, so that, the petitioner/dealer can produce the accounts and also C form declaration before the first respondent to establish that they cannot be made liable under Section 7-A of the Act.

5. In the light of the above, the Writ Petition is disposed of, by directing the petitioner to submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall fix a date, on which, the petitioner shall produce all the records, statement of accounts, Form C Declaration, etc., and after hearing the petitioner, in person, and carefully perusing the documents on records, produced by the petitioner, and taking note of their objections, the first respondent shall complete the assessment by passing a reasoned order. It is made clear that the Assessing Officer shall

independently complete the assessment, without, in any manner, being influenced or biased by the D3 proposal. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-IV)

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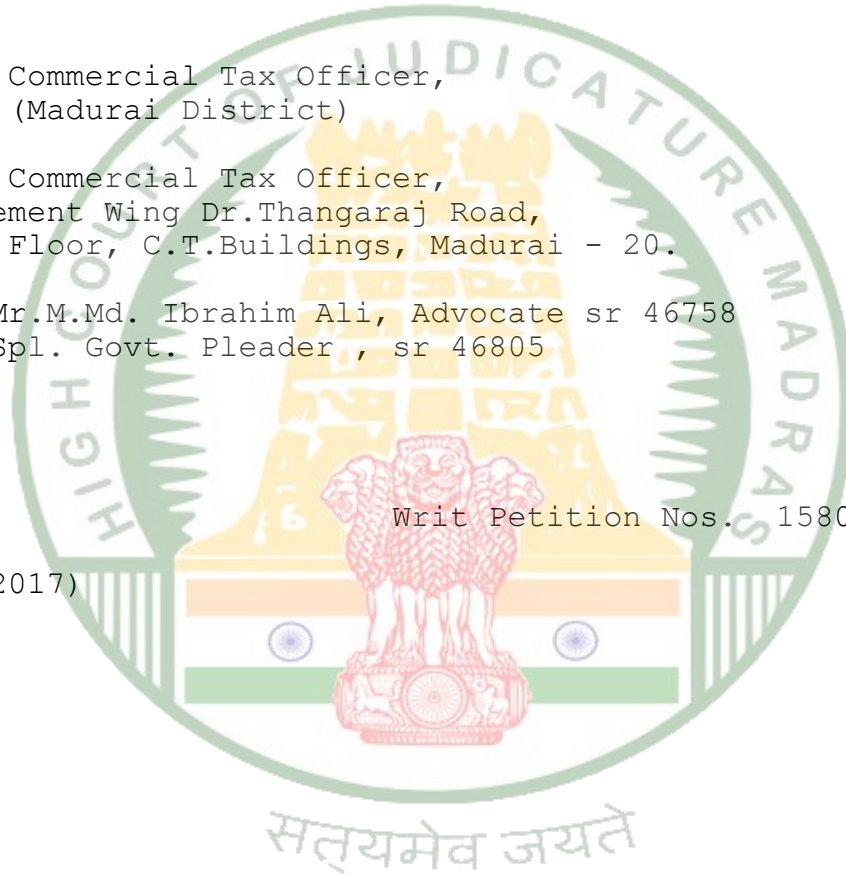
Sub-Assistant Registrar

To

1. Deputy Commercial Tax Officer,
Melur. (Madurai District)
 2. Deputy Commercial Tax Officer,
Enforcement Wing Dr.Thangaraj Road,
Ground Floor, C.T.Buildings, Madurai - 20.
- +1 CC to Mr.M.Md. Ibrahim Ali, Advocate sr 46758
+1 CC to Spl. Govt. Pleader , sr 46805

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SP(21/07/2017)



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