IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.11524 of 2018
and
W.M.P.Nos.13468 and 13469 of 2018

M/s. M.M.Agencies,
Rep. by its Proprietor – R.Mohandoss,
No.83, North Car Street,
Sirkazhi – 609110,
Nagapattinam District. ... Petitioner

vs.

The Commercial Tax Officer,
Sirkazhi,
Nagapattinam District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or an appropriate writ, order or direction calling for the records on the file of the Respondent in its impugned proceedings made in TIN:33314002432/2015-2016 dated 13.03.2018, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner: Mr. S.Rajasekar
For Respondent: Mr. M.Hariharan
Additional Government Pleader (Tax)

O R D E R

The petitioner is aggrieved against the order of assessment dated 13.03.2018 passed in respect of assessment year in 2015-2016.

2. The petitioner is a registered dealer. A notice dated 28.03.2017 for revision of assessment in respect of the assessment year 2015-2016 was issued to the petitioner. In response to the said notice, the petitioner filed their objection dated Nil received by the Assessing Officer on 26.07.2017. Thereafter, the impugned order of assessment was passed, revising the assessment and determining the tax liability as well as imposing penalty under Section 27(3)(c) of the Tamil Nadu Value Added Tax Act.

3. The main grievance of the petitioner before this Court is that the Assessing Officer has not considered the documents filed by the petitioner with their reply and on other hand, has erroneously found that the petitioner did not produce the required documents at the time of inspection by the Inspecting Team. Therefore, it is contended that the Assessing Officer has not independently applied his mind to the reply submitted by the petitioner and the documents enclosed therewith.

4. The learned Additional Government Pleader appearing for the respondent submitted that a perusal of the file indicates that the petitioner did not file any document along with the reply and therefore, the Assessing Officer cannot be found fault with.

5. Heard both sides and perused the materials placed before this Court.

6. A careful perusal of the impugned order of assessment would show that the Assessing Officer, though has chosen to extract the full reply submitted by the petitioner in the impugned order, has however, not considered the same in detail. It is further seen that the Assessing Officer has made an observation that production of copies of accounts and purchase bills before the Assessing Officer is not helpful to the dealers. Certainly, this observation apparently disclose the fact that the dealer had produced copy of accounts and purchase bills before the Assessing Officer. Therefore, the Assessing Officer ought to have considered those materials with an independent application of mind and pass the order of assessment in accordance with the law. It has not been done so in this case. The reasoning of the Assessing Officer that dealers have not produced the required documents at the time of inspection, cannot be accepted as the basis for concluding the assessment, when the fact remains that the dealer seems to have produced the books of accounts and the purchase bills along with their reply, as admitted by the Assessing Officer himself as stated supra.

7. Therefore, this Court is of the view that the Assessing Officer has to redo the assessment once again, after considering the objections raised by the petitioner and also by considering the documents once again to be produced by the petitioner, since it is stated by the learned Additional Government Pleader that the file does not contain those documents.

8. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer to consider the reply submitted by the petitioner and pass the order of assessment on merits and in accordance of law within the period of four weeks from the date of receipt of a copy of

this order. The petitioner is also directed to furnish one more set of documents in support of their claim before the Assessing Officer within a period of seven days from the date of receipt of a copy of this order. The Assessing Officer shall also afford an opportunity of personal hearing to the petitioner before concluding the assessment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi/sni

To

The Commercial Tax Officer,
Sirkazhi,
Nagapattinam District.

+ 1 cc to Mr. Government Pleader Sr.61043
+ 1 cc to Ms. R. Hemalatha, Advocate Sr.61083

W.P.No.11524 of 2018

(CS-VIII)
EU(19/09/2018)