IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.30461 to 30463 of 2008
and
MP.No.1,1,1 of 2008

M/s.Kumar Agencies,
Rep.by its Managing Partner,
Thiru P.Bhoopathi,
178, Anna Salai,
Rasipuram,
Namakkal District. ... Petitioner
(in all WP's)

Versus

The Commercial Tax Officer,
Rasipuram Circle,
Salem. ... Respondents
(in all WP's)

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in TNGST.3161263/05-06, TNGST.3161263/04-05, TNGST.3161263/03-04, dated 26.06.2008 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgement reported in (2006) 146 STC 642 (Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another) and further direct the respondent to pass order afresh in accordance with the principle laid down by this Hon'ble Court in the Judgement reported in 2004-05 (10) TNCTJ 168 (M.Krishnaswamy Vs.The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai and two others).

For Petitioner : Mr.R.Senniappan

For Respondents: Mr.V.Haribabu,
Special Government Pleader (Taxes)

COMMON ORDER

These writ petitions have been filed challenging final orders of assessment passed by the respondent for the assessment years 2005 - 2006, 2005 - 2004, 2003 -2004 respectively on the files of the respondent in TNGST.3161263/05-06, TNGST.3161263/04-05, TNGST.3161263/03-04, dated 26.06.2008 and quash the same as being contrary to the principle laid down by this Honourable Court in the Judgement reported in (2006) 146 STC 642 (Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another) and further direct the respondent to pass order afresh in accordance with the principle laid down by this Hon'ble Court in the Judgement reported in 2004-05 (10) TNCTJ 168 (M.Krishnaswamy Vs.The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai and two others).

2. According to the petitioner, they are registered dealer and are assessee on the file of the respondent. The petitioner dealt with electrical goods. During the course of their business the petitioner reported a total taxable turnover of Rs.9427521, for the assessment year 2005-2006; Rs.87,24,737 for the assessment year 2003-2004 and Rs.91.03.714 for the assessment year 2004-2005 respectively. It is contended that the records pertaining to the transactions made by the petitioner during the course of their business were properly maintained and that the goods sold by the petitioner were subjected to payment of Tax under the Tamil Nadu General Sales Tax Act. The petitioner has also periodically filed the returns duly reflecting the transaction. While so an inspection was conducted by the officials of the respondent in the business premises of the petitioner on 14.06.2005 and during the course of such inspection they have recovered the D-7 records from the place of business and also the stock of goods kept herein. Thereafter the respondent without verifying the D7 records, issued a notice on 30.07.2007 and proposed to assess/revise the taxable turn over submitted by the petitioner at the rate of 10% and 12% respectively under the Tamilnadu General Sales Tax, Act. After obtaining the copies of D7 records from the respondent, the petitioner, by letter dated 10.10.2007 requested the respondents to grant one month time to enable them to reconcile their accounts and to submit their reply. However, the petitioner has not received any reply. While so, after eight months from the receipt of letter dated 10.10.2007, the respondent issued the impugned orders of revision of assessment.

3. According to the learned counsel for the petitioner, the impugned orders are legally not sustainable and they are liable to be quashed. It is the contention of the counsel for the petitioner that on receipt of notice from the second respondent, after getting copies of the D-7 records, the petitioner sought one month time for production of accounts. However, the respondent neither granted time as sought for by the petitioner nor rejected such request made by the petitioner. However, after eight months, the respondent passed the impugned order revising the taxable turnover of the petitioner and called upon the petitioner to pay the balance taxable amount with penalty.

Therefore, according to the learned counsel for the petitioner, the impugned orders are in violation of principles of nature of Justice and on that ground he prayed for setting aside the impugned orders. In support of his contention, the learned counsel for the petitioner placed reliance on the orders passed by this Court Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another, reported in (2006) 146 STC 642 and M.Krishnaswamy Vs.The Registrar, Tamil Nadu Taxation Special Tribunal, Chennai and two others, reported in 2004-05 (10) TNCTJ 168.

4. The learned counsel for the petitioner further submitted that the respondent ought to have given sufficient opportunity to the petitioner especially, when the impugned orders passed by the respondent had fiscal impact. In support of this contention, counsel for the petitioner also relied on the judgements in W.P.No.1207 of 2006 and W.P.No.32349 of 2006 dated 11.10.2006 and prayed for allowing these writ petitions.

5. Per contra, the learned Special Government Pleader, would contend that sufficient opportunities have been given to the petitioner, but the petitioner did not avail those opportunities given to them. Further, he stated that the petitioner did not respond to the summons issued periodically to them. Therefore the enforcement officials thought it fit to go by the D3 proposals and passed best of judgements based on the entries found in the D7 records - treating the entire sales recorded in the seven diaries - 1st sales of Electrical goods not accounted for in the accounts for the year 2003-2004, 2004-2005 and 2005-2006 besides levy of penalty towards the taxable sales turnover that was suppressed by then.

6. Further, the assessing authority issued notices of revision for the year 2003 - 2004 and 2004-2005 based on the D3 proposals for the year 2005-2006 and then issued pre-assesment notice incorporating the taxable sales trunover suggested in the D3 proposal (Notice dated.30.07.2007) and on receipt of the notice the dealers filed a letter dated. 06.09.2007 requesting to issue the Xerox copies of the D7 records. The Xerox copies of D7 records were issued to the dealers on 09.10.2007 after getting permission from the Deputy Commissioner (CT), Namakkal. After receipt of the copies of D7 records the dealers sent a letter on 10.10.2007 requesting one month time to produce the accounts for the years 2003-2004, 2004-2005,2005-2006. The dealers have not produced the accounts even though they were allowed 7 months times. Therefore, the assessing authority resorted to pass final assessment orders for all the three years i.e., for 2003-2004, 2004-2005 and 2005-2006. The assessment orders and demand notices were served to the partner.

7. Above all, the learned Special Government Pleader also submitted that as against the orders, which are impugned in

these writ petitions, the petitioner has an alternative remedy of appeal before the Appellate authority namely Deputy Commissioner (CT), Salem. However, without filing appeal, the petitioner has chosen to file the present writ petitions which are not maintainable.

8. The learned counsel for the petitioner, in reply, would submit that inspite of the petitioner seeking to grant one month time to enable them to produce the relevant records, the respondent, without granting any further time, has straight away passed the impugned orders. Therefore, when there is violation of principles of nature of justice, an alternative remedy is not a bar for the petitioner to file the present writ petition. Therefore, the learned counsel for the petitioner would contend that the writ petitions are maintainable before this Court.

9. The learned counsel for the petitioner relied on the decisions of this Court wherein, in an identical circumstances, this Court set aside the order of the assessment passed by the Assessment Officer on the ground of violation of principles of nature of justice.

10. This Court has also inclined to pass the same order in these writ petitions as well. At this juncture, it has to be pointed out that even though the petitioner has written the letter dated 10.10.2007 to the respondent seeking one month time for furnishing the reconcile statement of accounts, the petitioner neither made any further representation nor produced the records to the respondent, instead the petitioner waited to hear from the respondent, till the respondent passed the impugned orders. Therefore, it is evident that the petitioner has also to be blamed as they did not furnish the reconcile statement to the respondent on their own. Therefore, while setting aside the orders impugned in these writ petitions on the ground of violation of principles of nature of justice, this Court is inclined to award cost of Rs.5,000/- payable by the petitioner in each writ petition, totally a sum of Rs.15,000/- payable to the Tamil Nadu State Legal Aid Service Authority, High Court Buildings, Chennai within the period of three weeks from the date of receipt of a copy of this order, failing which the authorities are directed to proceed further.

12. Subject to the aforesaid directions, the orders which are impugned in these writ petitions are set aside and the respondent is directed to afford sufficient opportunity to the petitioner and thereafter pass orders on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

13. In the result, these Writ Petitions are disposed of with the aforesaid direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Rasipuram Circle,
Salem.

+1cc to Special Government Pleader(Taxes) in sr.no.40002
+1cc to Mr.R.Senniappan, Advocate sr.no.40475

W.P.Nos.30461 to 30463 of 2008

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nr 27/09/2018