

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7073 & 7074 of 2013
and W.M.P.Nos.1 & 1 of 2013

Bharatham Stores
Represented by its Proprietor
P.Thirumani,
293, K.H.Road,
Aynavaram, Chennai-23. Petitioner in both W.P's.

Vs.

The Assistant Commissioner (CT),
Perambur II Assessment Circle,
Perambur, Chennai-11. Respondent in both W.P's.

Prayer in W.P.No.7073 of 2013 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33731061549/2006-07 dated 17.02.2012 received on 07.02.2013 and the consequential proceedings in RC 309/2013/A4 dated 07.03.2013 and RC.354/2013/A4 dated 14.03.2013, quash the same and consequently direct the respondent to revise the returns for the assessment year 2006-07.

Prayer in W.P.No.7074 of 2013 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33731061549/2007-08 dated 17.02.2012 received on 07.02.2013 and the consequential proceedings in RC 310/2013/A4 dated 07.03.2013 and RC.355/2013/A4 dated 14.03.2013, quash the same and consequently direct the respondent to revise the returns for the assessment year 2007-2008.

For Petitioner : Mr.S.Ravee Kumar
(in both W.P's)

For Respondent : M/s.G.Dhana Madhri
(in both W.P's) Government Advocate

C O M M O N O R D E R

Heard Mr.S.Ravee Kumar, learned counsel for the petitioner and M/s.G.Dhana Madhri, learned Government Advocate for the respondent.

2.The petitioner who is a registered dealer on the file of the respondent has filed these writ petitions challenging the assessment orders and the consequential proceedings by which the petitioner's request for accepting the revised return was rejected and the petitioner's request to revise the assessment under Section 84 of the TNVAT Act was also rejected. It may not be necessary for the Court to go into the question as to whether the order passed by the respondent rejecting the petition filed by the petitioner under Section 84 of the TNVAT Act was correct or not, or for that matter whether the respondent was justified in taking a stand that the petitioner cannot file revised return as it is, beyond time owing to an inadvertent defect which has crept in while passing the assessment order under Section 22 (2) of the Act. Section 21 of the TNVAT Act deals with filing of returns and every dealer shall file return in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with the prescribed documents and proof of payment of tax. Section 22 deals with deemed assessment and procedure to be followed by assessing authority. Sub-section (1) of Section 22 states that the assessment in respect of the dealer shall be on the basis of the return relating to his turnover submitted in the prescribed manner within the prescribed period. In terms of Sub-section (2) of Section 22, the assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax and every such dealer shall be deemed to have been assessed for the year on 31st October of the succeeding year. Sub-section (3) of Section 22 empowers the Commissioner to select for scrutiny 20% of the total number of assessments to examine the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made wherever necessary. Sub-section (4) of Section 22 deals with situation where dealer does not filed return or the return is incomplete or incorrect or not accompanied with any of the documents prescribed or proof of payment of tax. The assessing officer after making such enquiry, as it may consider necessary, assess the dealer to the best of his Judgment subject to the conditions as may be prescribed after the completion of that year. However, the dealer should be given a reasonable opportunity of being heard before such exercise is conducted.

3. On a perusal of the impugned assessment order dated

17.02.2012, it is seen that the order has been passed under Section 22 (2) of the Act i.e., to say that by the impugned order, the petitioner was deemed to have been assessed based on the returns filed by the petitioner accompanied by the proof of payment of tax. If the case of the petitioner was selected for random scrutiny under Section 22 (3) it would require a notice to be issued to the dealer. On the other hand if the assessment is to be revised under Section 22 (4) on the ground that the returns are incorrect or otherwise then also notice is required to be issued. So far as the petitioner's request for filing the revised returns, the time limit prescribed under Rule 7 (9) of the TNVAT Rules, 2007 may not be applicable to the petitioner's case as Sub-rule (9) was inserted by G.O.M.S.No.62, dated 06.05.2010 and in the absence of any specific direction, the said rule cannot be made to have retrospective effect. Thus, the respondent could not have revised the assessment and demanded tax from the petitioner without issuing a revision notice. The petitioner's case is that the impugned assessment order though dated 17.02.2012 was received by them on 07.02.2013. Therefore, the petitioner reasonably apprehends that the assessment order would have been antedated. On receipt of the same, the petitioner filed revised return for the period from April 2007 to March 2008 and at the relevant point of time, there was no time limit prescribed within which the revised return has to be filed. However, the respondent has referred to Rule 7 (9), which came into force only in the year 2010 and would not apply for the assessment year 2007-2008, and stated that revised return cannot be accepted. Since there was an error, the petitioner filed a petition under Section 84 of the TNVAT Act to rectify the error pointing out that Suo motu, the respondent has revised the turnover without an opportunity to the petitioner. Thus, I find that the procedure adopted by the respondent is completely flawed.

4. For the above reasons, the writ petitions are allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to issue show cause notice, afford an opportunity to the petitioner to file their objections and after affording an opportunity of personal hearing, re-do the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sj1

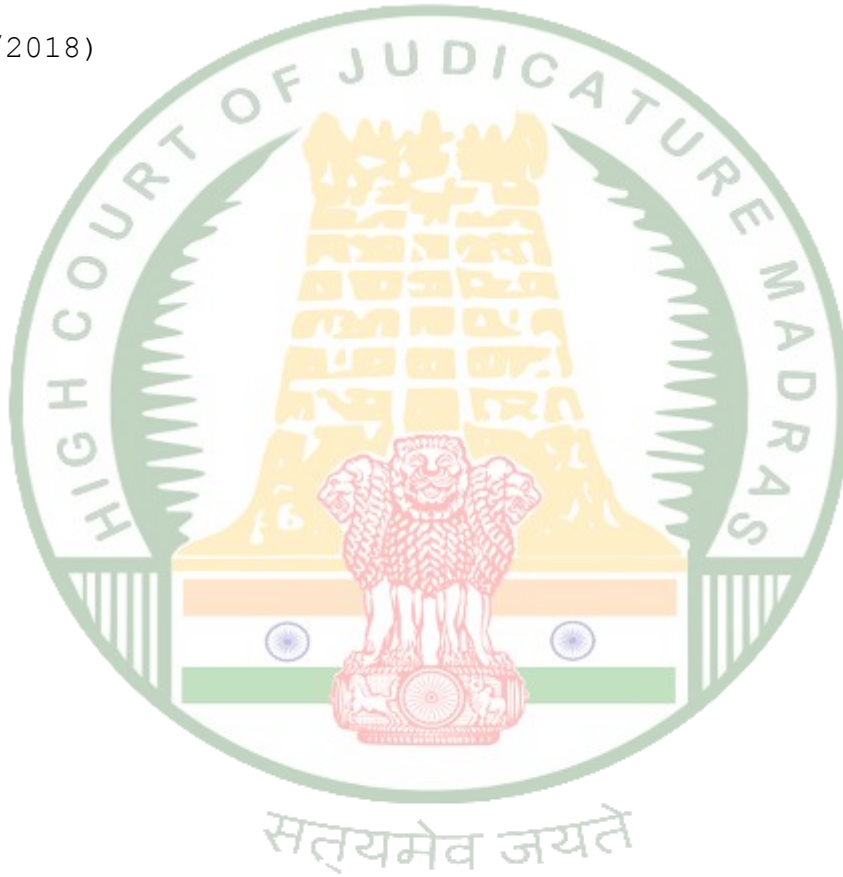
To

The Assistant Commissioner (CT),
Perambur II Assessment Circle,
Perambur, Chennai-11.

+2cc to Mr.S.Raveekumar, Advocate, S.R.No.5445
+1cc to the Government Pleader, S.R.No.6104

W.P.Nos.7073 & 7074 of 2013
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GJ(CO)
RRK(14/02/2018)



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