IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.23941 of 2018
and
W.M.P.Nos.27883 & 27884 of 2018

M/s.Thaker Brothers,
Rep. by its Partner, Bharat.G.Thaker
No.73, Devaraja Mudali Street,
Chennai - 600 003 ... Petitioner

vs.

The Assistant Commissioner (ST)
Evening Bazaar Assessment Circle,
No.38/49, Rajaji Salai,
Chennai - 600 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in CST 20696/2008-09 dated 15.05.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

ORDER

The petitioner is aggrieved against the order of assessment dated 15.05.2018, passed in respect of assessment year 2008-09.

2. Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate(Tax) appearing for the respondent.

3. The petitioner is a dealer in Cotton Coated Fabrics, etc. and they are an assessee on the file of the respondent. A pre-assessment notice dated 29.01.2016, was issued on the petitioner proposing to arrive total and taxable turnover as Rs.3,41,86,470/-. The petitioner filed their reply on 23.03.2016, by enclosing 'C' Form and E1 Form. Thereafter, another notice dated 26.09.2017 was issued by indicating proposed reversal of ITC under Section 19(4) of the Tamil Nadu Value Added Tax Act and proposed turnover on the interstate sales against the C Forms, without C forms and interstate stock transfer to the tune of Rs.1,13,99,585/- etc. On receipt of the second notice of proposal dated 26.09.2017, the petitioner approached the respondent through their request dated 13.10.2017 and 13.11.2017 and sought time to furnish relevant documents, as they were in the process of compilation of data and collection of necessary documents. However, the respondent passed the impugned order on 15.05.2018, imposing tax liability of Rs.9,95,874/-.

4. The main grievance of the petitioner before this Court is that the Assessing Officer, apart from not providing sufficient opportunity for the petitioner to file their objections to the second notice of proposal, has also traversed beyond the scope of the pre-assessment notice dated 29.01.2016, more particularly in respect of the issue namely interstate stock transfer of Rs.1,13,99,585/-, which was not shown in the original notice of proposal at all. According to the petitioner, in the original notice of proposal, the proposed turnover as against interstate stock transfer was Rs.74,26,166/-, for which, the petitioner had already filed necessary forms and therefore, the respondent is not justified in assessing the remaining turnover of Rs.39,73,409/- for imposing tax at the rate of 12.5% for want of declaration forms.

5. On the other hand, the learned counsel for the respondent submitted that the Assessing Officer has passed the impugned order of assessment, since the petitioner has not filed the necessary forms in pursuant to the issuance of second notice of proposal dated 26.09.2017, and therefore, he cannot be found fault with. She further stated that since such assessment order was passed even after waiting for a period of 30 days, as claimed by the petitioner in their reply to the second notice of proposal, the petitioner is not entitled to say that they were not given opportunity.

6. Upon perusing the pre-assessment notice dated

29.01.2016, 26.09.2017 and the impugned order of assessment dated 15.05.2018, it is seen that in respect of interstate stock transfer, a reference made in the second notice of proposal to the tune of Rs.1,13,99,585/- was without any material details as to how such figure was arrived at by the respondent, especially when the first pre-assessment notice dated 29.01.2016 does not contain such figure. Even assuming that the Assessing Officer has come to note some other transactions after issuing the original pre-assessment notice, it is for him to give such details in the second notice as to how such figure was arrived at. Except stating that there was an interstate stock transfer for Rs.1,13,99,585/-, the Assessing Officer has not stated as to how such figure was arrived at. Therefore, it can be expected that the petitioner will be in a position to effectively give their reply to the said notice of proposal. In any event, as the impugned order of assessment was passed without the reply to the second notice of proposal, this Court is of the view that the entire matter can be reconsidered by the Assessing Officer by issuing one more notice of proposal with material details and particulars and thereafter, to pass the order of assessment after receiving the reply from the petitioner and also after affording an opportunity of hearing to them. It is made clear that none of the observations made supra can be taken to mean that this Court is expressing any view on the merits of the assessment either in favour or against the petitioner, as it is for the Assessing Officer to redo the entire exercise once again on merits and in accordance with law.

7. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment once again by issuing fresh notice of proposal to the petitioner and thereafter, to pass the order of assessment within a time frame as stipulated hereunder :

a. The Respondent shall issue fresh notice of proposal within a period of two weeks from the date of receipt of a copy of this order.

b. On receipt of such notice of proposal, the petitioner shall give their reply with necessary documents/ forms within a period of two weeks thereafter.

c. On receipt of such reply with necessary documents/ forms, the Assessing Officer shall indicate the date of personal hearing to the petitioner and complete such personal hearing within a period of two weeks from the date of receipt of the reply.

d. On completion of such personal hearing, the Assessing Officer shall pass fresh order of assessment on merits and in accordance with law within a period of four weeks thereafter.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sni/vri

The Assistant Commissioner (ST)
Evening Bazaar Assessment Circle,
No.38/49, Rajaji Salai,
Chennai - 600 001.

+1cc to Mr.S.Ramanathan , Advocate SR.No.66470

+1 CC TO GOVERNMENT PLEADER SR.NO. 66768

W.P.No.23941 of 2018

ASK(28/09/2018)