IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.1.2018

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1550 of 2018 &
WMP.Nos.1953 & 1954 of 2018

Tvl.T.Jayaprakash ...Petitioner

Vs

The Commercial Tax Officer,
Pallakode Assessment Circle,
Dharmapuri. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in order dated 04.4.2017 in TIN 33763290835/2014-15, quash the same and consequently direct the respondent to revise the assessment order dated 27.5.2016 in TIN 33763290835/2014-15 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.Adhithya Reddy

For Respondent : Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. Considering the limited issue involved, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the assessment order dated 27.5.2016 for the year 2014-15 and the order dated 04.4.2017 passed by the respondent rejecting the petition filed by the petitioner under Section 84 of the said Act.

3. This Court finds that the reasons given by the respondent in the impugned order dated 04.4.2017 are justified because the dealer was not diligent enough in cooperating with the assessment proceedings and that the dealer failed to file his objections to the revision notice dated 06.4.2016. Nevertheless, the Assessing Officer can very well consider the issue as to whether there is any factual error, which, according to the petitioner, has crept in while passing the assessment order. However, the petitioner has to be partially blamed, as he did not cooperate with the assessment proceedings.

4. This Court, in the case of Malladi Drugs & Pharmaceuticals Ltd. Vs. AC (CT), Nandambakkam Assessment Circle [reported in MANU/TN/4009/2015], considered the scope of Section 84 of the said Act and held that the power is neither limited nor circumscribed as understood by the Assessing Officer and as pointed out by the Hon'ble Division Bench of this Court in the case of Khivraj Motors Limited Vs. AC (CT) [WA.Nos.3201 to 3204 of 2004 dated 04.2.2010], an order passed contrary to the provisions of the Statute or judgments of the High Court or the Hon'ble Supreme Court, which is covered on the issue and binding on the Authorities, when not considered or when the factual aspect has not been correctly stated, a mistake would occur on the face of the record.

5. In this case, the petitioner has pointed out that in the assessment order, the Assessing Officer stated that the petitioner paid a sum of Rs.76,500/- as tax whereas the petitioner would submit they paid tax to the tune of Rs.3,76,500/- for the year 2014-15. It is further submitted that the tax deducted at source received for the year 2014-15 from the Government Department to the tune of Rs.12,07,686/- was also not considered. Therefore, the petitioner wants the Assessing Officer to verify their books of accounts, adopt a correct gross profit percentage and pass fresh orders. Further, the petitioner has referred to Section 5 of the State Enactment to state that the purchase of goods from unregistered dealers is not levyable to sales tax, as the entire purchase of goods were used in works contract.

6. Considering the above facts, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer, however, subject to a condition.

7. Accordingly, the writ petition is partly allowed and the order dated 04.4.2017 is set aside subject to the condition that the petitioner shall pay 15% of the disputed tax within a period of 15 days from the date of receipt of a copy of this order. On compliance of such direction, the respondent is directed to consider the petition for rectification dated 15.3.2017, afford

an opportunity of personal hearing, peruse the books of accounts and pass fresh orders on merits and in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Pallakode Assessment Circle,
Dharmapuri.

+ 1 cc to Special Government Pleader Sr.6706

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SV(CO)
EU(15/02/2018)