IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17179 of 2018
and
W.M.P.No.20442 of 2018

K.M.C.ALUMUNIUM PRIVATE LIMITED
Represented by its Managing Director
Sanjay Agarwal
C-13, SIPCOT INDUSTRIAL PARK
IRUNGATTUKOTTAI,
SRIPERAMBADUR - 602 105. ...Petitioner

vs

Commercial Tax Officer
Broadway Assessment Circle
No.199, Thambu Chetty Street
Chennai - 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the Respondent passed in TIN/33030041106/2013-14 dated 25.05.2018 and to quash the same and further direct the respondent to redo the assessment, after calling for the books of accounts of the petitioner in accordance with law.

For Petitioner : Mr.N.Murali

For Respondent : Mrs.G.Dhanamadhri
Government Advocate(Taxes)

O R D E R

The order of revision of assessment issued under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”) in proceedings dated 25.05.2018 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the notice under Section 27(1) of “the TNVAT Act” was issued by the competent authority on

31.03.2016 and the writ petitioner had immediately responded and submitted his objections on 21.04.2016 and on 13.06.2016. However, the officer, who was dealing with the files in relation to the writ petitioner had not passed any orders for more than two years. The impugned order has been passed surprisingly after a lapse of two years in proceedings dated 25.05.2018 by a different Commercial Tax Officer.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the notice was issued by one Mr.Shanmugam, who was the Commercial Tax Officer, Broadway Assessment Circle during the relevant point of time. However, the present revision of assessment order is issued by another Commercial Tax Officer in proceedings dated 25.05.2018. In this regard, the writ petitioner has relied upon the clarifications/circulars issued by the Commissioner of Commercial Tax, more specifically, clause(10) of the circular, which reads as under:

> "There is no legal bar for passing an order on the basis of a notice issued by the predecessor in office but the officer who passes the order should hear the representations, if any, of the dealer, apply his mind to the issues involved and pass appropriate orders."

4.The grievances of the writ petitioner is that lapse of time caused injury to the claim of the writ petitioner. The merits of the case of the writ petitioner has not been adjudicated by the officer, who is holding the post at present. Therefore, the writ petitioner is unable to adjudicate the matter in the manner prescribed under law.

5.The learned Government Advocate appearing on behalf of the respondent opposed the contentions by stating that against the final order passed under Section 27 of "the TNVAT Act", an appeal provision is available under Section 51 "the TNVAT Act". Thus, the petitioner has to exhaust the appeal remedy provided under Section 51 of "the TNVAT Act". Before exhausting the appeal remedy available under the above said Act, no writ petition can be entertained against the original order passed by the authority under Section 27 of "the TNVAT Act".

6.This Court is of an opinion that whenever a revision is undertaken by the original authority, the same has to be done within a reasonable period of time. When the show cause notice itself was issued on 31.03.2016 and the writ petitioner also had submitted his objections on 21.04.2016 and on 13.06.2016, then there is no reason to keep the files pending for about two years. There is a reasonable doubt even in the mind of the Court that there is a possibility of negligence and dereliction of duty on the part of the officer, who was dealing with the files during the year 2016. In this regard, the Commissioner has to take appropriate action against the officials concerned and, if there is any negligence or dereliction on duty on the part of the officials concerned, who were dealing with the files during the relevant point of time, then the commissioner has to initiate disciplinary action under the Disciplinary and Appeal Rules for dereliction on duty and negligence. The reasons, if provided by the authorities are acceptable, then the Commissioner may pass appropriate orders in this regard.

7.However, the learned Government Advocate appearing on behalf of the respondent brought to the notice of this Court that the Assistant Commissioner(CT), Broadway Assessment Circle issued a notice in proceedings dated 28.03.2018 to the writ petition. However, even the said notice has been issued only in the year 2018. However, the lapses occurred during the relevant point of time has to be looked into by the Commissioner.

8.In respect of the present writ petition on hand, this Court is of an opinion that on account of lapse of time, the petitioner was unable to submit his further objections or otherwise, in respect of the assessment year 2013-2014. Thus, this Court is of an opinion that the present writ petition is a fit case for remittance. Accordingly, the impugned order passed by the respondent in proceedings in TIN/33030041106/2013-14 dated 25.05.2018 is quashed and the respondents are directed to issue a fresh show cause notice under Section 27 of "the TNVAT Act" within a period of two weeks from the date of receipt of a copy of this order. The writ petitioner, on receipt of the notice, submit his explanation/objections and documents, if any, within a period of two weeks thereafter. On receipt of the explanation/objections from the writ petitioner, the authorities competent shall consider all the materials available on record and pass orders on merits and in accordance with law within a period of four weeks thereafter.

9.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Broadway Assessment Circle,
No.199, Thambu Chetty Street,
Chennai - 600 001.

+1cc to Mr.N.Murali, Advocate Sr.45213
+1cc to the Special Government Pleader Sr.45396

W.P.No.17179 of 2018

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