IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.19073 of 2018
and W.M.P.No.22451 of 2018

Tvl.Dukes Enterprises,
Rep., by its Proprietor, D.Karuppaiah,
No.130, Old No.5, 4th Phase, 3rd Cross,
T.V.K.Industrial Estate, Ekkattuthangal,
Chennai-32. ... Petitioner

-vs-

The State Tax Officer,
KK Nagar Assessment Circle,
No.1, Greams Road,
CT Buildings Annex, Chennai-06. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the files of the respondent in CST No.595556/2012-13 dated 10.07.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mrs.G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Taxes) accepting notice on behalf of the respondent.

2.With the consent on either side, this writ petition is taken up for final disposal.

3.The petitioner is aggrieved by the revision of assessment made by the respondent vide order dated 10.07.2018 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”) read with the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as “the CST Act”) for the assessment year 2012-13 by exercising his powers under Section 84 of the TNVAT Act. The impugned order has been questioned on the ground of lack of jurisdiction.

4.After elaborately hearing the learned counsel for the petitioner and the learned Government Advocate (Taxes), I am of the considered view that the impugned revision of assessment is wholly without jurisdiction. I support such conclusion with the following reasons.

5.The assessment, for the said year under the provisions of the CST Act, was completed on 23.01.2015. After the assessment was completed, the petitioner submitted a letter enclosing Form 'C' declarations obtained from the buyers and requested the Assessing Officer to revise the assessment. This request was positively considered by the respondent and an order to the said effect was passed and served on the petitioner on 30.05.2015.

6.On a perusal of the said order, it is seen that wherever Form 'C' declarations were produced by the petitioner, due credit has been given and the tax has been levied at 2%. In respect of sales not covered by Form 'C' declarations, higher rate of tax at 14.5% has been levied. After adjusting the input tax credit availed, net tax due was modified and the petitioner has also paid the said amount. After the order had attained finality in the year 2015, the respondent issued a notice dated 07.05.2018 seeking to revise the assessment, which was already revised.

7.It appears that though the petitioner received the notice dated 07.05.2018, no objections were filed. Consequently, the proposal in the notice dated 07.05.2018, was confirmed and the impugned assessment order has been passed. The respondent being an Assessing Officer of the petitioner has no jurisdiction to revise his own assessment order, which itself is a revision of assessment and there is no such power vested with the respondent to pass the impugned order by invoking the power under Section 84 of the TNVAT Act. Thus, for the above reasons, the impugned revision of assessment is held to be without jurisdiction.

8.Accordingly, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

abr

To

The State Tax Officer,
KK Nagar Assessment Circle,
No.1, Greams Road,
CT Buildings Annex, Chennai-06.

+ 1 cc to Mr. Special Government Pleader SR.50524
+ 1 cc to M/s. Divijayakumar, Advocate SR.50192

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KAN(CO)
EU(21/08/2018)