IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.7197 of 2016
&
W.M.P.Nos.6384 and 6385 of 2016

M/s.Supreme Art Works
rep. By its partner J Haresh Bakshani
No.42, K.K.R Avenue
Perambur, Chennai-600 011 ... Petitioner

Vs.

1.The Commercial Tax Officer
Choolai Assessment Circle
No.10, Greams Road
Chennai- 600 006

2.The Assistant Commissioner (CT)
Sembium Assessment Circle
(Previously known as Perambur I Assessment Circle)
No.15 and 16, Malligai Avenue
100 Feet Road
Villivakkam, Chennai

3.The Deputy Commercial Tax Officer
Group I, Central Enforcement Wing I
Room No.34, II Floor
Greams Road, Chennai- 600 006 ...Respondents

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records on the files of the first respondent in TNGST 0500552/2005-06 dated 21.01.2016 and quash the same as illegal and barred by limitation under Section 16 of TNGST Act.

For Petitioner : Mr.T.Pramod Kumar Chopda
For Respondents : Mr.M.Hariharan
Additional Government Pleader

ORDER

Heard Mr.T.Pramod Kumar Chopda, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2.The petitioner is aggrieved by an Assessment Order dated 21.01.2016 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") for the Assessment year 2005-06. The respondent in the impugned order has stated that the petitioner, during the course of inspection, has accepted the tax liability and interest and paid the same and has requested only for waiver of the penalty, which request has also been rejected by the respondent in the impugned order. In my considered view, there cannot be any estoppel against the petitioner from challenging the impugned Assessment Order in its entirety. Any alleged admission before the Enforcement Officer cannot take away the right of the petitioner to challenge the assessment order. Therefore, the petitioner's challenge to the Assessment Order in its entirety is entertained.

3. The learned counsel for the petitioner challenged the impugned order on two grounds. The first ground raised by the petitioner is that the impugned Assessment Order is barred by limitation. The second ground is that the first respondent failed to appreciate the specific stand raised by the petitioner that the business was sold as a whole and there was no sale of plant and machinery. When the case came before this Court on an earlier occasion, directed the learned counsel for the petitioner to file the Memorandum of Understanding dated 10.03.2016 and the sworn statement recorded at the time of inspection.

4. On a perusal of the Memorandum of Understanding, it prima facie appears that the Company was transferred to M/s.BNT Connections Impex Pvt. Ltd.,. However, I find that the respondent, though has referred to the Memorandum of Understanding in the impugned Assessment Order, has failed to render any finding as to the effect of transaction, which has been recorded in the Memorandum of Understanding. The respondent was duty bound to record whether the transaction was akin to a slump sale or a sale of plant and machinery. Without rendering such a finding and without passing a speaking order, the respondent could not have brushed aside the Memorandum of Understanding dated 10.03.2006. Apart from this, when the sworn statement was recorded, the petitioner has elaborately stated about the nature of transaction. This aspect has also been ignored by the second respondent. What is disturbing to note is that the Enforcement Wing, while conducting the inspection, has collected cheques from the petitioner to the tune of Rs.17,17,582/-. This Court has repeatedly held that the Enforcement Wing has no jurisdiction to collect cheques as if it is an advance tax. Therefore, such collection itself is illegal and based on such collection, the hands of the Assessing Officer cannot be strengthened.

5. With regard to the issue relating to limitation, the respondents in the counter affidavit would state that the Registration Certificate of the petitioner was cancelled on 31.03.2005. The effect of such cancellation on the petitioner's business has to be considered. While considering the said issue, the point pertaining to limitation for re-opening the assessment is also required to be considered. Though the petitioner has not pleaded that the re-opening of the assessment was illegal while submitting objections, in the writ petition, the petitioner has raised a specific ground that as per Section 16 of the Tamil Nadu General Sales Tax Act, the re-opening proceedings has to be initiated within five years from the date of assessment order and the notice dated 07.09.2015 proposing to revise the assessment for the year 2005-06 is beyond the period of limitation prescribed under the Act. In my considered view since the effect of the Memorandum of Understanding has not been considered by the respondent and not even a finding has been recorded by the respondent in the impugned Assessment Order, the assessment has to be necessarily redone.

Thus, for the above reasons, the writ petition is allowed and the impugned order is quashed and the matter is remanded to the first respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing, consider the effect of the Memorandum of Understanding dated 10.03.2006 and the stand taken by the petitioner in the sworn statement recorded during inspection on 13.10.2014 as well as the plea of limitation and after affording an opportunity of personal hearing, redo the assessment in accordance with law. Further more, with regard to the cancellation of the Registration Certificate of the petitioner is concerned, I find that the same was not specifically dealt with in the impugned Assessment Order. Therefore, if the respondent proposes to take a decision based on such cancellation, then it cannot be done without issuing a proper notice. Therefore, to implement the above direction issued by the Court, the respondent is directed to issue a fresh notice to the petitioner and proceed in accordance with law in terms of the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.T.PRAMOD KUMAR CHOPDA, Advocate, S.R.No. 50204

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EV(CO)
TR(07/08/2018)