IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.25434 & 25435 of 2018
and
WMP Nos.29592 & 29594 of 2018

S.B. Medicals
Represented by its Proprietrix
Dr.S.Shoba
31, Vanniar Street, Porur,
Chennai-116. ..Petitioner(in both Wps)

Vs.

The Commercial Tax Officer
Ayyappanthangal Assessment Circle
5/44, Thiruvalluvar Salai
Ramapuram, Chennai-89. ..Respondent(in both Wps)

Writ petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN 33291388196/2013-2014 dated 01.08.2018, and TIN 33291388196/2014-2015 dated 02.08.2018 respectively and quash the same.

For Petitioner: Mr.R.Kumar
(in both Wps)

For Respondent : Mr.Master Ganesh
Government Advocate (Tax)
(in both Wps)

C O M M O N O R D E R

Mr.Master Ganesh, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. Both these writ petitions are filed challenging the revised orders of assessment dated 01.08.2018 in respect of assessment year 2013-2014 and 02.08.2018 in respect of assessment year 2014-2015.

3. The petitioner is an Assessee on the file of the respondent. In respect of the assessment years 2013-2014 and 2014-2015, the Assessee filed their monthly returns and according to the Assessee, the turn over did not exceed Rs.50 Lakhs. Thus, it is stated that the deemed assessment was made on 31.10.2014 in respect of assessment year 2013-2014 and on 31.10.2015 in respect of assessment year 2014-2015. However, it is stated that the petitioner, since has crossed Rs.50 Lakhs ceiling in the subsequent assessment years, the assessment for those years was made accordingly and the petitioner has also paid the required tax. Thereafter, the respondent herein issued notices of proposal to revise the assessment in respect of subject matter two assessment years, by claiming that the petitioner/Assessee has crossed Rs.50 Lakhs ceiling of turn over in respect of those assessment years also and consequently, ought to have filed Form-I returns with Annexure-I & II and payment of tax at 0.5% on Rs.50 Lakhs and 5% beyond the turn over reaches at Rs.50 Lakhs. Therefore, the respondent called upon the petitioner to file their objections, also by indicating levy of penalty under Section 22(5) of the Tamil Nadu Value Added Tax, Act, 2006 at 150% of the balance of tax proposed. The said notice of proposal also indicated that the petitioner should appear in person or through an authorized representative for personal hearing within 15 days of receipt of the said notice. The petitioner filed their reply and objected to the proposal. However, the present impugned orders were passed confirming the proposal on tax and also imposing penalty at 150% under Section 27(3)(c) of the TNVAT Act, 2006.

4. The grievance of the petitioner before this Court is that the respondent is not entitled to revise the assessment in respect of those two assessment years, when already the deemed assessment had taken place as early as in the month of October, 2014 & 2015, merely, because the petitioner has crossed the ceiling of Rs.50 Lakhs in the subsequent assessment years. It is the further contention of the petitioner that the very imposition of penalty under Section 27(3)(c) of the TNVAT Act, 2006, that too, without providing an opportunity of personal hearing is erroneous, as such imposition of penalty under the said provision of law has not preceded by any notice, while the notice already served on the petitioner only indicated the proposed penalty only under Section 22(5) of the TNVAT Act.

5. Thus, the learned counsel for the petitioner submitted that the assessment orders cannot be sustained, not only on merits, but also on the ground of violation of principles of natural justice.

6. The learned Government Advocate (Tax) for the respondent submitted that the revised assessment was made by the respondent, by exercising his power conferred under the Statute, more particularly, after considering the objections raised by the petitioner.

7. However, the learned Government Advocate is not in a position to explain and satisfy this Court as to how the penalty under Section 27(3)(c) of the TNVAT Act, was levied on the petitioner, when the notice of proposal indicated that the same was proposed under Section 22(5) of the TNVAT Act. Further perusal of the impugned orders would also show that the petitioner was not provided with any personal hearing. No doubt, the notices of proposal indicated that either the petitioner in person or his authorized representative is entitled for personal hearing within 15 days on receipt of the said notice. However, it is seen that the respondent has not sent any further communication indicating the date of personal hearing to the petitioner. Therefore, this Court is of the view that, without expressing any view on the merits of the assessment, the matter needs to be remitted back to the respondent for re-considering the matter afresh, after giving due opportunity of hearing to the petitioner.

8. Accordingly, these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the respondent for passing fresh orders of assessment, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a coy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mk
To

The Commercial Tax Officer
Ayyappanthangal Assessment Circle
5/44, Thiruvalluvar Salai
Ramapuram, Chennai-89.

+1cc to Mr.R.Kumar, Advocate Sr.66944
+1cc to the Government Pleader Sr.67146

W.P.Nos.25434 & 25435 of 2018

srg 1/10/2018