BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD)No.18583 of 2015
and
M.P.(MD)No.1 of 2015

Thiru.T.T.K.Construction,
Rep. by its Managing Partner,
P.Thanikodi : Petitioner

Vs.

The Assistant Commissioner (CT),
Chokkikulam Assessment Circle,
Madurai-20. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN 33745003187/2008-09, dated 01.09.2015 and quash the same as invalid, illegal and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

The petitioner is doing works contract. He filed returns and with respect to assessment year 2008-2009, a revision of assessment was made by the respondent. The petitioner filed his objections and final order was passed vide proceedings in ASST.No.3374 5003187/2008-09, dated 15.06.2012 reserving certain expenses incurred in carrying out the works contract. According to the petitioner, as per Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, expenses incurred, while executing the works contract, is exempted. However, the order passed by the authority dated 15.06.2012 has become final. Suddenly, the same authority has issued another notice of revision dated 14.08.2015 in respect of the same assessment year 2008-2009 and passed the impugned order on 01.09.2015. By the impugned order, the authority has disallowed certain expenses in respect of the same transactions, which is now under challenge.

2. According to the learned counsel for the petitioner, once revised assessment order is passed, the Assessing Officer will become *functus officio*. He does not have any jurisdiction to re-open the case on his own motion and revise once again. If there is any defect, it is for the appellate authority or any higher

authority to take appropriate action in respect of the defects, but, not the very same officer, who had exercised his jurisdiction and passed final orders.

3. In the instant case, the impugned order dated 01.09.2015 refers to the first revision order passed in TIN 3374 5003187/2008-09, dated 15.06.2012 and also refers to the revision notice dated 14.08.2015. Therefore, it is crystal clear that the very same officer for the second time has issued the revision notice to which he has no jurisdiction. He becomes *functus officio* in the eyes of law and he cannot re-visit his own order on his own motion. The petitioner has filed detailed objections with regard to the same. However, the authority has held that instead of filing proof of evidence, he has filed objections without filing relevant vouchers and therefore, the burden of proof lies on the dealer and a personal hearing is not warranted in the dealer's case.

4. At the outset, as observed above, the officer, who has become *functus officio*, cannot re-visit his own order and revise it on his own motion. While doing so, he has also observed that personal hearing is not warranted. By very many judgments and instructions issued by the Department, providing opportunity of personal hearing is categorically reiterated as mandatory. Therefore, violation of principles of natural justice is flagrant and accordingly, the impugned order suffers for violation of principles of natural justice. In such circumstances, this Court is inclined to set aside the order for want of jurisdiction as well as for violation of principles of natural justice.

5. In the result, the Writ Petition is allowed and the impugned order dated 01.09.2015 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To
The Assistant Commissioner (CT),
Chokkikulam Assessment Circle,
Madurai-20.
+1cc to Mr.A.Chandrasekaran, Advocate SR.No.72311
+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.72808
Sml
MK/KAK/SAR 2/06.08.2018/2P/4C

Order made in
W.P(MD)No.18583 of 2015
11.07.2018