BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.19178 of 2015
and
M.P.(MD)No.1 of 2015

Tvl.Yousuf & Co.,
Represented by its Partner,
E.A.Muthalif : Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Commercial Taxes,
St. George Fort,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner (CT)-III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul-624 001. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the third respondent in TIN.3332240098/2013-14, dated 25.09.2015 and quash the same and to consequently direct the third respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Dr.A.Thiyagarajan, Senior Counsel, For Mr.S.Karunakar
For Respondents : Mr.A.Muthukaruppan, Additional Government Pleader

ORDER

The petitioner has come forward with the present Writ Petition seeking for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the third respondent in TIN.3332240098/2013-14, dated 25.09.2015, quash the same and direct the third respondent to re-do the assessment afresh, after giving adequate opportunity to him.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is a dealer of Hides and Skins and registered under the third respondent and filing monthly returns under the Tamil Nadu Value Added Tax Act, 2006. For the assessment year 2013-2014, he reported a total and taxable turnover of Rs.7,64,56,501/- and Rs.5,70,53,444/- respectively and paid the tax after adjusting the Input tax credit available to him. The third respondent passed a deemed assessment on 31.10.2014. Thereafter, on 25.09.2015, the impugned notice for the assessment year 2013-2014 was sent to him. In the said notice, it was referred that the notice dated 22.06.2015 sent to the petitioner was received by his authorized Accountant, but the petitioner had not filed his objections. Further, while passing final orders, the third respondent has included the new items other than that were proposed by him in his proceedings dated 22.06.2015. Therefore, alleging violation of principles of natural justice, the proceedings dated 25.09.2015 is under challenge in this Writ Petition.

3. Per contra, the learned Additional Government Pleader would contend that service of notice on the dealer or his manager or agent or the legal practitioner appointed to represent the dealer is necessary, as per Rule 19(1)(b) of the Tamil Nadu Value Added Tax Rules, 2007. Since the records were required from the petitioner, some of the proposals were left out at the time of issuing notice dated 22.06.2015. However, while passing final orders, all these materials were considered and those items were also included in the order dated 25.09.2015.

4. I have considered the submissions made on either side.

5. Insofar as the service of notice is concerned, Rule 19(1)(b) of the Tamil Nadu Value Added Tax Rules, 2007, specifically mentions that it can be effected either electronically or manually following the modes specified thereunder. Rule 19(1)(b) reads as under:

> "If such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family."

6. A reading of Rule 19(1)(b) of the Tamil Nadu Value Added Tax Rules, 2007 shows that summons can be served manually on the dealer or his manager or agent or the legal practitioner appointed to represent him.

7. In the instant case, the legal practitioner, who was representing the dealer, had received the notice and would also state before the authorities that he had forgotten to communicate

the notice to the petitioner. In such circumstances, the service of notice by the respondents cannot be found fault with. It can be said that it is effectively served on the dealer.

8. Insofar as the additional proposals are concerned, the third respondent, by notice dated 22.06.2015, had mentioned as many as 11 proposals. But, while passing orders, more than 4 additional proposals came to be added and penalty is levied on the basis of the additional proposals, which were obtained through comparing the claim of ITC and web-site data.

9. In the counter-affidavit filed by the third respondent at Paragraph No.9(v), it is categorically admitted that "some proposals were left because the reply is utmost necessary for the confirmation whereas all other proposals can be inferred by perusing the available records and confirmation in the order is necessary as the Audit of assessment records would be questionable of any omission without reasoning, hence, every aspect is examined and confirmed with reasoning and findings as provided in the notice."

10. This Court, while dealing with a similar matter in the case of Intek Engineers v. Assistant Commissioner (CT)(Mad) reported in [2017] 105 VST 318 (Mad), has held that the Assessing Officer, having pointed out two proposals, added two more grounds while completing the assessment proceedings and in Paragraph No.4, it was observed as under:

> "Having admitted the mistake, the respondent could not have proceeded further, without making proper proposal, he proposed to proceed with the assessment on totally different lines. This mistake committed by the respondent goes to the root of the matter, affecting the very orders of assessment. This is sufficient to hold that the impugned orders are bad in law, as they have exceeded the proposal in the revision notices, dated November 14, 2016, and without due application of mind."

11. In the instant case also, the Assessing Officer has pointed out additional proposals, which were not found in the notice issued to the petitioner dated 22.06.2015. Since it goes to the root of the matter, it has to be revised afresh. In such circumstances, the impugned order dated 25.09.2015 is set aside and the matter is remanded back to the third respondent for fresh consideration on the following conditions:

(i) the petitioner shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), within a period of three weeks from the date of receipt of a copy of this order and also produce the relevant records pertaining to the assessment year 2013-2014 to the third respondent, within 15 days.

(ii) On such deposit, the third respondent shall issue fresh notice setting out the proper proposals with regard to all the items, within a period of 15 days thereafter.

(iii) On receipt of the objections, the third respondent shall give an opportunity of personal hearing to the petitioner and thereafter, pass final orders on merits and in accordance with law, complying with the principles of natural justice, within a period of one month thereafter.

12. In fine, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
State of Tamil Nadu,
Department of Commercial Taxes,
St. George Fort,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner (CT)-III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul-624 001.

+1cc to M/S.S.Karunakar, Advocate SR.No. 62362
+1cc to Special Government Pleader, SR.No. 62475

Order made in
W.P.(MD)No.19178 of 2015
Dated: 19.04.2018

sml
JM/KKR/SAR 2/17.05.2018/4P/6C