BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.07.2018
CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.13589 of 2018
and W.M.P.(MD) No.12378 of 2018

TVL. Ganesa & Co
Represented by its Parner
K.Gunalan ... Petitioner

Vs.

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

2.The Assistant Commissioner (ST),
Munichalai Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN: 33794900582/2016-17 dated 04.04.2018 and quash the same.

For Petitioner : Mr.Rajakarthikeyan

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

The Writ Petition has been filed for the issuance of a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in TIN: 33794900582/2016-17 dated 04.04.2018 and quash the same.

2. The writ petitioner is dealer in sales of General Consumer goods and the petitioner submitted return for the year 2016-2017. After inspection of the Enforcement Wing of the Department, certain objections were raised and the petitioner was issued with notice dated 28.11.2017 and thereafter, the petitioner filed reply on 29.12.2017. On considering the objections, the Assessing Officer has dropped the proposals and withdrawn the penalty imposed on the petitioner by order in TIN/33794900582/2016-2017 dated 29.12.2017.

3. While the matter stood thus, the very same Assessing Officer had changed his opinion and passed another order in TIN: 33794900582/ 2016-2017 dated 04.04.2018 confirming the proposals sent by him pursuant to the surprise inspection conducted by Enforcement Wing on 18.11.2016. Aggrieved over the second order, the petitioner is before this Court.

4. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. Admittedly, the Assessing Authority has issued a revised notice and received the objections filed by the dealer. After considering the same on merits, he passed the final Assessment Order. Once Assessment Order is passed, automatically the Assessing Authority becomes functus officio. If the dealer is aggrieved, it is open to him to file an appeal or revision as the case may be. Vice versa, the Department also can take appropriate steps against passing of such an order. But by change of opinion, the respondent cannot issue a second order on the very same assessment without the previous order being set aside in appeal or revision.

6. In the instant case, the order dated 29.12.2017 passed by the Assessing Authority has become final. As stated supra, he has become functus officio. He is not empowered to re-visit his own order and pass a fresh order, while previous order is in subsistence. The contention of the learned counsel merits consideration.

7. As held by various judgments in (1995) 97 STC 442(AP) (In Girdharlal and Company Vs.State of Andhra Pradesh) (In the Andra Pradesh High Court) (2011)46 VST 275 (In Ashoka Sweets Vs. State of Tamil Nadu) (In the Madras High Court) wherein it is held that lapses in the reassessment proceedings to make a de nova enquiry cannot be conducted. The Hon'ble Supreme Court of India also, in Civil Appeal No.4760 of 2016 (In M/s.Ravi Prakash Refineries (P) Ltd., Vs. State of Karnataka dated 03.05.2016), held that re-opening assessment cannot be entertained. In view of the dictum laid down by the Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of this Court, I am inclined to set aside the order passed by the second respondent dated 04.04.2018. Accordingly, the same is set aside.

8.In fine, the Writ Petition is allowed. No costs. Consequently, connected W.M.P.(MD) No. 12378 of 2018 is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam,Chepauk, Chennai-600005.

2.The Assistant Commissioner (ST),
Munichalai Road Assessment Circle,
Commercial Taxes Complex,Dr.Thangaraj Salai,
Madurai - 625 001.

+1cc to M/S.B.Rooban, Advocate SR.No. 70697

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cm
JM/RSK/SAR 2/17.07.2018/3P/4C