BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.250 of 2015 and
M.P.(MD)No.1 of 2015

Tvl.Kanagavalli Mattu Theevanam Angadi,
Rep. by its Proprietor D.Selvaraj,
No.10/69, Railway Feeder Road,
Kallikudi, Thirumangalam Taluk. : Petitioner

Vs.

The Commercial Tax Officer,
Thirumangalam Circle,
Thirumangalam. : 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:33375041366/2013-14, dated 19.11.2014 and quash the same as illegal, without jurisdiction and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.A.Muthukaruppan,
Additional Government Pleader

ORDER

The petitioner is a dealer in cattle feed goods, cement, etc. He filed returns as per the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2013-2014. He reported a total and taxable turnover of Rs.1,18,43,863/- and paid the tax due after availing the input tax credit. The returns for the assessment year 2013-2014 would deem to have assessed after 31.10.2014 unless it is intervened by the assessment order passed by the Assessing Authority. In the instant case, no such assessment order was passed by the Assessing Authority. However, on 30.06.2014, a notice was issued by the respondent on the basis of the inspection conducted by the Enforcement Wing Officers at the place of business of the petitioner. The respondent has called for objections for the stock differences proposed in the revision notice. The petitioner filed his objections on 30.08.2014 stating that the proposal issued by the respondent is premature as it was issued even before the assessment year is complete and also the method adopted by the Enforcement Wing officers is erroneous, as held by various judgments of the Tribunal and High Court. The respondent, considering the objections, passed the final order on 19.11.2014. The final order was passed without setting out any reason for overruling the objections. Hence, the petitioner is before this Court challenging the order passed by the respondent dated 19.11.2014.

2. The learned counsel for the petitioner would contend that the notice issued by the respondent is premature and is not sustainable in the eyes of law as it has been issued even before the deemed date i.e., 31.10.2014. Secondly, the specific objection is raised as to the method adopted by the Enforcement Wing Officers with the support of judgments on that aspect. But the respondent has ignored to consider the same and passed a cryptic order, which is violative of principles of natural justice.

3. Per contra, the learned Additional Government Pleader appearing for the respondent would contend that as per Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006, best of judgment assessment can be made at any time without waiting for the deemed date of assessment and, therefore, there is no illegality in passing the order. Further, there is an appeal remedy provided under Section 51 of the Tamil Nadu Value Added Tax Act, 2006, but, in order to escape from payment of 25% of the statutory deposit, the petitioner preferred this Writ Petition without exhausting the alternative remedy and, therefore, the Writ Petition is not maintainable and liable to be dismissed.

4. I have considered the rival contentions made on either side.

5. Admittedly, a revision notice was issued on 30.06.2014 on the basis of the report submitted by the Enforcement Wing Officers and penalty under Section 27(3) was also proposed. In such an event, it cannot be said that it is passed on the basis of best of judgment basis. The authority should have waited till the deemed date of assessment, that is to say, till 31.10.2014. In that view of the matter, the notice issued by the respondent is premature and unsustainable in law. Secondly, the objections submitted by the petitioner reveal that he relied on the judgments of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, that the method adopted as to arriving at the stock difference by the Inspection Team is erroneous. Further, he also relied on the judgment of this Court in **Tax Case (Revision)(MD) 100 of 2012, dated 11.10.2012 in State of Tamil Nadu vs. Tvl.Jalaram Timber Depot, Madurai**, to show that stock variation arrived at by adopting various formulae method in terms of money value is not a scientific method and it is not correct method to adopt the real and true value. Even though specific objections were raised, the respondent, while passing orders, has observed as under:

> **"The dealer has stated that there was no alleged stock difference is found at the time of inspection the inspecting officials have taken only the approximate value and adopted. Stock difference could not be arrived by this**

method. They have adopted uniform fright charges, and gross profit.

Whatever it may be, the dealer has not produced any material evidence for the proposal. The explanation filed by the dealer is not convinced. Objections are overruled."

6. The observation that **'whatever it may be'** discloses that the respondent is conscious of the wrong method adopted by the Enforcement Wing Officers. In that instance, the respondent should have rejected the method adopted by the Enforcement Wing Officers and should have adopted the correct method. If the respondent is of the opinion that the method adopted is correct, then, it is incumbent on him to justify as to how the method adopted is correct and the judgment cited by the petitioner is not applicable to his case. Without setting out any reason, it is stated that whatever it may be, the dealer has not produced any material evidence for the proposal, which appears to be very cryptic, non-speaking, deprive of the dealer to know on what grounds his claim is rejected. Such an order is clearly in violation of principles of natural justice.

7. In view of the discussions made above, I find that the impugned order is not sustainable in law and accordingly, it is set aside and the matter is remitted back to the respondent for fresh consideration.

8. At this juncture, the learned counsel for the petitioner submits that the petitioner has already paid 10% of the tax demand pursuant to an order of interim stay granted by this Court on 09.01.2015.

9. In view of the above submission, the respondent shall take into account the amount already paid by the petitioner while passing final orders.

10. The Writ Petition is allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Commercial Tax Officer,
Thirumangalam Circle, Thirumangalam.

+ 1 CC TO Mr.A.CHANDRASEKARAN, ADVOCATE IN SR No. 75138

SML
TE/RP/SAR-3 : 21/08/2018 : 3P/3C

Order made in
W.P(MD)No.250 of 2015
26.07.2018