BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.11.2018
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23154 of 2018
and W.M.P.(MD) Nos.21045 and 21046 of 2018

M/s.S.Mohan & Co.,
Rep. by its Partner - S.Manoharan,
No.13-G/2, William Road,
Cantonment,
Trichy - 620 001.
Trichy District. .. Petitioner

Vs.

The Deputy Commercial Tax Officer,
Palakkarai-I, Assessment Circle,
Trichy,
Trichy District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of the respondent in it impugned proceedings made in TIN 33043520345/2013-14 dated 27.11.2014 and to quash the same.

For Petitioner : Mr.Rajasekar
for Mrs.R.Hemalatha
For Respondent : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

The petitioner is a dealer registered with the respondent. The subject matter pertains to the assessment year 2013-14. The petitioner's assessment got concluded on a deemed assessment basis. Since their turn over was below the ceiling limit, they had paid the tax at the rate of 5% under Section 3(4) of Tamilnadu Value Added Tax Act, 2006.

2. This was sought to be re-opened by the respondent on the ground that the petitioner had breached the condition on which they were granted concession. Pre-revision notice was issued to the petitioner vide notice dated 27.10.2014. The petitioner submitted his objection on 03.11.2014. Not satisfied with the same, the impugned order dated 27.11.2014 came to be passed calling upon the petitioner to pay the balance tax amount of Rs.5,39,138/-. Penalty was also levied at 150% to the tune of Rs.8,08,707/-. This order is under challenge in this writ petition.

3. The impugned order was passed way back in November 2014. This writ petition has been filed in November 2018. There has been a delay of 4 years in mounting a challenge to the impugned order. This Court therefore called upon the petitioner to substantiate as to how the writ petition could be entertained notwithstanding the laches on its part. The learned counsel submitted that if this Court would come to a conclusion that the impugned order suffers from a fundamental illegality, notwithstanding the delay, the writ petition could still be entertained. He also submitted that the petitioner can be put on terms. He pointed out that such a course of action was adopted by another learned Judge of this Court in W.P.Nos.1416 and 1417 of2018 by order dated 24.01.2018 and W.P.Nos.31363 and 31365 of 2017 vide order dated 02.01.2018.

4. Heard the learned counsel for the petitioner and Mr.Aayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondent. Mr.K.Sathish Kumar, the Deputy Commercial Tax Officer, Palakkarai -I Circle, Trichy, is also present in person and he assisted this Court.

5. The allegation made against the petitioner in the pre-revision notice is that the petitioner had made other State purchase to the tune of Rs.1,44,150/-. According to the respondent, the consignor in this case was a dealer based in Chittoor. Bill value is Rs.1,44,150. The petitioner in his reply dated 03.11.2014 categorically denied the said allegation. According to the petitioner, they did not make any inter-state purchases, let alone from the New Ranga Fruit Products, Chitoor. When such specific denial is found in the petitioner's objection, in the very nature of things, the Department has to be make good their case. The burden lay fully and squarely only on the Department. In the present case, this objection raised by the petitioner was brushed aside with the casual observation that the dealer did not produce any valid document and that therefore, the contention raised by the dealer is not accepted. This is not the way to deal with an objection of this nature. Therefore, I hold that the order suffers from a fundamental illegality and therefore, interference is warranted.

6. This Court has been consistently holding that when an assessment that was done for an assessment year is sought to be re-opened, due opportunity of hearing must be given to the dealer and personal hearing must be afforded. In the present case, such personal hearing was not afforded. The petitioner has enclosed a letter dated 15.12.2014 from the said New Renga Fruit Products, Chittoor. The said dealer has categorically stated that he never made any supplies to the petitioner herein. This document ofcourse is later in point of time. But the fact remains that this document reinforces the earlier defense taken by the petitioner herein.

7. I hold that the impugned order has been passed in violation of the principles of natural justice. The petitioner was also not afforded an opportunity of cross-examining the other end dealer. Any order which has been passed in violation of principles of natural justice is a nullity in law. Such an order ought to be quashed. If the petitioner is non-suited on the ground of laches, the result will be that an illegal order would become enforceable. Therefore, I deem it appropriate to invoke my jurisdiction under Article 226 of Constitution of India.

8. I am strengthened in my resolve in view of the earlier orders passed in the writ petitions referred to earlier. At the same time, the petitioner has to be put on terms. In this regard, the learned counsel appearing for the petitioner on instruction from the petitioner came forward to submit himself to any terms that may be imposed by this Court. The petitioner is therefore directed to pay a sum of Rs.25,000/- as cost to the respondent. The petitioner shall pay a sum of Rs.75,000/- without prejudice to his contention to the respondent towards tax. These amounts shall be remitted within a period of two weeks from the date of receipt of a copy of this order.

9. The order impugned in this writ petition is set aside. The matter is remitted to the file of the respondent to hold a fresh enquiry and pass appropriate orders in accordance with law.

10. In the result, this writ petition is allowed. No costs. Consequently, connected W.M.P.(MD) Nos. 21045 and 21046 of 2018 are closed.

Sd/-
Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To,
The Deputy Commercial Tax Officer,
Palakkarai-I, Assessment Circle,
Trichy,
Trichy District.

+1CC to Mrs.R.Hemalatha, Advocate, SR.No.96453
+1CC to the Special Government Pleader SR.No.96704

W.P.(MD) No. 23154 of 2018
and W.M.P.(MD) Nos.21045 and 21046 of 2018
22.11.2018

CM
ES/PM/SAR 3/19.12.2018/3P/4C