BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.612 of 2011
and
M.P(MD)No.1 of 2011

Tvl.Vani Oil Mills,
Represented by its Partner Thiru.K.R.Kannan,
D.No.5/217, Sattur Road,
Sivakasi,
Virudhunagar District. ... Appellant/Writ Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.Assistant Commissioner (C.T) - IV,
C.T.Buildings, Satchiahpuram,
Sivakasi,
Virudhunagar District. ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to allow this Writ Appeal by setting aside the order passed in W.P(MD)No.6175 of 2011 dated 14.06.2011.

Prayer in WP(MD). 6175/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the Pre Assessment Notice issued by the 2nd respondent in TNGST 6020852/05-06 dated 18.04.2011 received by the petitioner on 21.04.2011 and quash the same and to direct the 2nd respondent to follow the directions of the 1st respondent issued in Lr.No.K.Dis. Act Cell 1/80548/02 dated 04.01.2003 and K.Dis. Acts cell 1/67123/2003 dated 29.07.2004 and to meet out all the objections filed on 27.05.2011 by giving a personal hearing as per the representation filed to the 2nd respondent on 27.05.2011 (received by the respondent on 27.05.2011).

For Appellant : Mr.A.S.Mujiburrahman

For Respondents: Mr.C.M.Mari Chellaiah Prabhu,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN,J.)

The Writ Petitioner is the appellant and in the affidavit filed in support of the Writ Petition, it is averred among other things that the Petitioner Firm is a registered Partnership Firm and it is also a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). The petitioner would state that it is a manufacturer of edible oil and also importing edible oil from other countries and selling the same within the State and it is also an agent for certain Principals (Oil Dealers) within the State of Tamil Nadu, per agreement and it is also stocking edible oil.

2. The Writ petitioner would aver that it's accounts were produced before the second respondent for the purpose of final assessment for the years 2005-2006 and after verification, the said official has issued a pre-assessment notice dated 18.04.2011, wherein certain proposals were put forth. The second respondent has assessed the taxable turnover at Rs.10,10,78,111/- and also proposed a penalty of Rs.15,08,672/- at 150% times on the additional sales tax due and also penalty of Rs.12,068/- under Section 12(3)(b)(i) of the TNGST Act, 1959 for the difference in tax due.

3. The Writ Petitioner would further aver that the petitioner has submitted his response dated 29.04.2011 stating among other things that the error occurred due to the wrong entry in the computers for the respective months, made by their staff and while verification and audit by the the Statutory Auditor, the said mistake was revealed and certification of correct turnover has also been obtained and therefore, prayed to the second respondent to re-consider the said proposal and drop the further proceedings.

4. The Writ Petitioner submitted its further objections on 18.05.2011. The office of the second respondent vide notice dated 18.05.2011, has fixed the date of personal hearing on 26.05.2011 at 11.00 a.m. The Petitioner once again submitted additional objections dated 26.05.2011 and 27.05.2011 and admittedly, did not attend the personal hearing. Thereafter, the petitioner came forward to file W.P(MD)No.6175 of 2011 challenging the legality of the pre-assessment notice dated 18.04.2011 with a further direction, directing the second respondent to follow the directions of the first respondent in letters dated 04.01.2003 and 29.07.2004 and to meet out all the objections filed on 27.05.2011 by giving a personal

hearing, as per the representation dated 27.05.2011. The said Writ Petition was entertained and interim orders were granted. The Writ Petition was taken up for final disposal and vide order dated 14.06.2011, this Court had dismissed the Writ Petition by placing reliance upon the judgment rendered by the Division Bench of this Court dated 09.07.2007 in W.A(MD)No.229 of 2007, which in turn placed reliance upon the judgment rendered by the Honourable Apex Court reported in AIR 1998 SC 227 (Union of India vs. Tata Engineering and Locomotive Co., Ltd.,), as a premature one and challenging the legality of the same, the Writ Petitioner came forward to file this Writ Appeal.

5. The learned counsel appearing for the appellant would submit that in the light of the Tamil Nadu Additional Sales Tax (Amendment) Act, 1996, which came into force on 01.09.1996, for levy of additional sales tax, the principals should club all the agents' turnover and pay the additional sales tax by themselves and therefore, the impugned assessment is per se unsustainable and prays for interference.

6. Per contra, the learned Additional Government Pleader for the respondents has drawn the attention of this Court to the counter affidavit and would submit that the appellant made a challenge to the pre-revision notice without exhausting the statutory alternative remedy and prays for dismissal of the Writ Appeal.

7. This Court paid its best attention to the rival submissions and perused the materials placed before it.

8. It is not in serious dispute that the appellant in response to the pre-assessment notice, originally submitted its objections on 29.04.2011 stating among other things that due to the wrong entry in the computers for the respective months, the error has occurred and while verification, the Statutory Auditor revealed the said fact and certification of correct turnover has also been obtained and therefore, prays for dropping of the proposal for levying additional sales tax and it is also followed by yet another objections dated 18.05.2011.

9. The second respondent after taking cognizance of the appellant's objections dated 18.05.2011 afforded the appellant with an opportunity of personal hearing by calling upon them to appear before him on 26.05.2011 at 11.00 a.m and admittedly, the appellant did not attend the personal hearing. The appellant has also submitted his written objections on 26.05.2011 followed by yet another objections dated 27.05.2011.

10. In the considered opinion of this Court, the appellant without attending the personal hearing has rushed to the Court and filed the Writ Petition and it was entertained and they had the benefit of interim orders and the writ petition ultimately came to be dismissed on the ground that it is a premature one.

11. The primordial submission made by the learned counsel appearing for the appellant/writ petitioner is that in the light of the Tamil Nadu Additional Sales Tax (Amendment) Act, 1996, the pre-assessment notice, as on date, is unsustainable.

12. In the considered opinion of this Court, it is not for this Court to appreciate the said contention put forth by the appellant. It is also pertinent to point out at this juncture that though the appellant afforded with an opportunity of personal hearing, in terms of the Commissioner's Circulars in Lr.No.K.Dis. Act Cell I/80548/02 dt. 04.01.2003 and in K.Dis. Acts cell I/67123/2003 dt. 29.07.2004, for the resaons best known, they did not attend the personal hearing. The learned Judge while dismissing the Writ Petition has also taken note of the judgment dated 09.07.2007 in W.A(MD)No.229 of 2007, which in turn placed reliance upon the judgment rendered by the Honourable Apex Court reported in AIR 1998 SC 227 (Union of India vs. Tata Engineering and Locomotive Co., Ltd.,), for the proposition that pre-revision notices cannot be questioned in a Court of law, as it is a premature one.

13. This Court on an independent application of mind, is of the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge while dismissing the Writ Petition as premature.

14. The second respondent is directed to issue fresh notice of personal hearing to the appellant/writ petitioner, within a period of two weeks from the date of receipt of a copy of this judgment and upon receipt of the same, the appellant/writ petitioner shall attend the personal hearing and produce the materials in support of its objections dated 29.04.2011 and 18.05.2011, which are referred to in the notice dated 18.05.2011 as well as the further objections dated 26.05.2011 and 27.05.2011 and if those objections are received by the office of the second respondent, the second respondent shall dispose of the same on merits and in accordance with law, within a further period of four weeks thereafter and communicate the decision taken, to the appellant/writ petitioner.

15. In the result, the Writ Appeal is dismissed subject to above directions. No Costs. Consequently, interim order stands vacated and the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

2.Assistant Commissioner (C.T) - IV,
C.T.Buildings, Satchiahpuram,
Sivakasi, Virudhunagar District.

+1cc to M/S.A.S.MUJIBUR RAHMAN, Advocate SR.No.41228.
+1cc to Special Government Pleader in SR.No.41447.

W.A(MD)No.612 of 2011
09.01.2018

pm
SDS/GT/SAR 4/29.01.2018/5P/5C