IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.P.No.10211 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2012

L.G.Balakrishnan & Bros. Ltd.,

P/O Box No.2003,
Ganapathy,
Coimbatore 641 006. ... Petitioner

Vs.

1.The Assistant Commissioner,
Commercial Taxes,
Trichy Road assessment circle
Coimbatore 641 018.

2.Special Commissioner and Commissioner,
Commercial taxes,
Chepauk, Chennai. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the case from the file of the first respondent herein, quash the impugned order of the first respondent 23.2.2011 in TNGST 1880016/2002-03.

For Petitioner : Mr.R.Venkataraman, Senior Counsel
for M/s.Lakshmi Sriram

For Respondents: Mr.M.Hariharan
Government Advocate

ORDER

The petitioner challenges an order of assessment dated 23.02.2011 passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959, (in short act) for the period 2002-2003.

2.The petitioner had received a pre-assessment notice on 28.03.2008 putting it to the notice that the monthly returns filed by it were not liable to be accepted as correct, in the light of various irregularities notice by the inspecting officials in the course of an inspection by the Enforcement Wing of the Commercial Taxes Department on 07.10.2004.

3.According to the assessing authority, the petitioner has effected sales of 'Auto Kits' as a single unit whereas the kits ought to be taxed in terms of Section 3(J) of the Act, since they comprise of three different processes such as, Wheel sprocket, small sprocket and chain. Moreover the assessing authority was of the view that there is a transfer of property in retreading work, and the turnover relatable to the work of retreading is liable to re-sale tax in terms of Section 3(H) of the Act. He also proposed, in the absence of Form-17, to reject the claim of concessional rate of tax in terms of Section 3(3) of the Act. Since the original purchase bills had not been produced by the dealer in respect of the second sales turnover, the turnover was also proposed to be assessed at the higher rate. Receipts of labour charges and retreading charges were proposed to be brought to tax and exemption claimed proposed to be denied, on account of non production of evidences in this regard. The assessing authority noted that no books of accounts had been produced and thus proposed the finalisation of the assessment to the best of his judgment. The above proposals were in addition to the levy of penalty. The petitioner, vide replies dated 12.04.2008 and 14.05.2008 sought some time to submit supporting materials, since it was engaged in the preparation of assessment for the previous year. On 28.05.2009 some of the particulars sought for, such as Annual Report, revised returns and tax remittance details were circulated.

4.The impugned order of assessment dated 23.02.2011 has been passed on a verification of the details produced.

5.Though various grounds had been raised challenge the assessment on merits, the main ground that is raised and argued before me is the violation of principles of natural justice insofar as no personal hearing has been afforded to the petitioner, prior to completion of the assessment. This is a fact.

6.A perusal of the impugned order does not reveal that a personal hearing has been afforded to the petitioner. The counter also does not state so. This Court has been taking consistent stand that a personal hearing is part and parcel of the principles of natural justice. The Principal Secretary and Special Commissioner, Commercial Taxes Department has also, vide a slew of circulars and Instructions, adviced the officials of the Department to ensure that a personal hearing is granted to the assessee prior to finalisation of proceedings of assessment, whether sought for by the assessee or not.

7.In the light of aforesaid discussion and in the interests of justice, the impugned order of assessment is set aside. The petitioner will appear before the authority on Tuesday the 1st of October, 2019 at 10.30 a.m. with his written submission as well as documents in support thereof and no further notice need be issued in this regard. After hearing the petitioner and consideration of documents, if any, filed, the assessing authority shall pass an order of assessment within a period of four weeks from date of conclusion of personal hearing.

8.This writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Assistant Commissioner,
Commercial Taxes,
Trichy Road assessment circle
Coimbatore 641 018.

2.Special Commissioner and Commissioner,
Commercial taxes,
Chepauk, Chennai.

+1cc to the Special Govt.Pleader (Taxes),vide SR.No.81488

+1cc to Mr.Lakshmi Sairam, Advocate, SR.No.81129

W.P.No.10211 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2012

Kak(26/09/2019)