IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.1107 of 2019
and
W.M.P.Nos.1252 & 1257 of 2019

M/s.Sridhar and Co.,
Rep. by its Proprietor U.Sridhar
No.20-D, Bye Pass Road,
Near Samiyar Madam,
Ambur - 635 802
Vellore District.

...Petitioner

vs.

The State Tax Officer
Ambur Assessment Circle
Ambur, Vellore District. ...Respondent

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in TIN No.33754261568/2017-2018 dated 04.12.2018 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed challenging the order of assessment dated 04.12.2018 passed in respect of assessment year 2017-2018.

3. Heard both sides.

4. It is seen that a notice of proposal dated 24.09.2018 was issued on the petitioner. It is further seen that the petitioner sent a reply on 19.11.2018, objecting to the proposal made in the said notice. The Assessing Officer passed the impugned order of assessment on 04.12.2018. The main grievance expressed before this Court against the impugned order is that the Assessing Officer has been simply carried over by the report submitted by the Inspecting Officials, without considering the objections raised by the petitioner and giving his own finding independently.

5. On the other hand, the learned Additional Government Pleader contended that the Assessing Officer has considered the reply and thereafter, passed the impugned order and therefore, the order of assessment cannot be questioned before this Court.

6. A careful perusal of the impugned order of assessment would show that the Assessing Officer has found that at the time of inspection, the assessee could have explained the actual position to the Inspecting Officer, and that however, they have admitted the existence of excess stock. Therefore, the Assessing Officer found that the present reply submitted by the petitioner pursuant to the notice of proposal is an after thought and thus, not acceptable.

7. I am not able to accept the above view expressed by the Assessing Officer, as it is well settled that he, being a quasi judicial authority, has to apply his independent mind to the facts and circumstances and the reply submitted by the petitioner and thereafter, to give his own findings and reasons as to how the proposals made in the notice are sustainable. Instead of doing so, the Assessing Officer in this case, has stated that the reply submitted by the petitioner is an after thought since the assessee had failed to explain the same before the Inspecting Officer. Needless to say that the report submitted by the Inspecting Officer, cannot be the sole basis for the Assessing Officer to pass the impugned assessment order, even though the same can be one of the materials for passing such order. Therefore, I find that the Assessing Officer has to consider the reply filed by the petitioner and thereafter, to pass the fresh order of assessment on merits and in accordance with law, by expressing his independent reasonings and findings on the reply filed by the petitioner. Therefore, this Court is inclined to interfere with the impugned order and remit the matter back to the Assessing Officer.

8. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment, after considering the reply submitted by the petitioner by applying his own independent mind. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
The State Tax Officer
Ambur Assessment Circle
Ambur, Vellore District.

+1 CC to Spl. Govt. Pleader(T) sr 4293.

W.P.No.1107 of 2019

RK(CO)
SP(06/02/2019)