IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.5190 & 5191 of 2009
and
M.P.Nos.1 & 1 of 2009

M/s.Ambient Controls (P) Ltd.,
No.4/25, Ist Floor, F-4,
Muthyalu Reddy Nagar,
2nd Street, Adambakkam,
Chennai - 600088. ... Petitioner in all WPs

Vs

The Assistant Commissioner (CT),
Velachery Assessment Circle,
No.19, 4th Main Road, Nanganallur,
Chennai - 600061. ... Respondent in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the respondent in TIN/33640983950/2006-07 and TIN/33640983950/2007-08 on his files, set aside the proceedings dated 24.02.2009 passed therein and further direct the respondent to permit the petitioner to avail the benefit of compounding under Section 6 of the Tamil Nadu VAT Act, 2006, besides issuing Form-F declarations for the purpose of moving the goods from their Head Office at Bangalore to the Chennai branch on stock transfer for being used in the works contract.

For Petitioner : Mr.P.V.Sudakar
(in all WPs)

For Respondents : Mrs.Dhanamadhri, GA
(in all WPs)

C O M M O N O R D E R

The petitioner herein had challenged the provisional assessment notice for the assessment years 2006-07 and 2007-08, through the notice dated 24.02.2009, which is after the assessment year.

2. The main submission of the learned counsel for the petitioners is that, under Section 25(1) of the TNVAT Act, the Assessing Officer is not empowered to provisionally assess the petitioners for a portion of the monthly returns, after the assessment year has been completed. In support of this submission, the learned counsel relied upon a decision of the Division Bench of this Court in M/s.Jothi Melters (India) Pvt. Ltd., vs The Commercial Tax Officer in W.A.Nos.1412 and 1413 of 2009, dated 14.10.2009. The relevant portion of the said order reads as follows:

> "3. The submission of the appellant before the learned single Judge was that both these assessment years were over and what the respondent had done was to pass a provisional assessment order. It was submitted that when the assessment year was already over, the final assessment order was expected to be passed and not a provisional assessment order. The said submission was turned down by the learned single Judge by accepting the plea of the respondent that the appellant could go in appeal to the Appellate Assistant Commissioner of Commercial Taxes against the orders which were sought to be impugned before the learned single Judge.
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> 4. Mr.R.L.Ramani, learned Senior Counsel appearing for the appellant has drawn our attention to the judgment of a Division Bench of this Court in State of Tamil Nadu vs. Wander Limited reported in (1990) 79 S.T.C. 421 (Mad.), which in turn, in paragraph 9 refers to another Division Bench judgment in Mahendrakumar Ishwarlal and Company vs. Deputy Commercial Tax Officer reported in (1971) 28 S.T.C. 551 (Mad.) to the effect that it is not open to the Revenue to pass a provisional order of assessment after the end of the assessment year.
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> 5. In view of this clear enunciation of the legal position, the learned Special Government Pleader (Taxes) leaves it to the Court to pass appropriate orders.
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> 6. Having noted the submissions of the learned Senior Counsel appearing on behalf of the appellant which are based on the two Division Bench judgments and wherein the proposition of law is also very clear, we allow both these appeals by quashing and setting aside the order passed by the learned single Judge in the two writ petitions as well as the provisional order of assessment dated 15.06.2009."

3. As per the above order of the Division Bench, when the assessment year has completed, a provisional assessment order cannot be passed and that the Assessing Authority can only be entitled to pass final assessment order. In the instant case, the impugned notice dated 24.02.2009 makes a reference of having been issued under Section 25(1) of the TNVAT Act for the relevant period, which is apparently after the assessment year. By applying the ratio laid down by the Division Bench in the aforesaid decision, this Court is of the view that the pre assessment notice, cannot be sustained.

4. Nevertheless, it is always open to the Assessing Officer to finally assess the dealer in accordance with law.

5. In the light of the above observations, the impugned provisional assessment notices, are quashed, with liberty to the Assessing Authority to pass final assessment orders for the relevant period covered under these writ petitions, in accordance with law.

6. Accordingly, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

hvk

To

The Assistant Commissioner (CT),
Velachery Assessment Circle,
No.19, 4th Main Road, Nanganallur,
Chennai - 600061.

+1 cc to Mr.B.Raveendran, Advocate, S.R.No.61650

+1 cc to the Special Government Pleader(Taxes), S.R.No.62051

W.P.Nos.5190 & 5191 of 2009
and
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SRY(CO)
SSM(26/08/2019)