IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.02.2019

CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.4493 & 4498 of 2019
and
WMP.No.5075 of 2019

Mark Studio India Private Limited
Represented by its Directorate
Francis Bastiyan
No.11 First Floor,
Ruby Mahal,
Ramanathan Street,
Mahalingapuram,
Chennai- 600 034. ...Petitioner in above W.Ps.

Vs

The Assistant Commissioner (ST)
Valluvar Kottam Assessment Circle
No.10 Palaniappa Maaligai
Greams Road,
Chennai-600 006 …Respondent in above W.Ps.

Prayer in W.P.No.4493 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records on the files of th Respondent herein in the 33386279808/2014-15 dated 08.01.2019 quashing the same.

Prayer in W.P.No.4498 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records on the files of the Respondent herein in TIN 33386279808/2014-15 dated 05.02.2019 quash the same while directing the respondent herein to rectify his assessment in TIN 33386279808/2014-15 dated 08.01.2019 as prayed for by the petitioners in their application dated 31.1.2019.

For Petitioner : Mr. K.A. Parthasarathy
For Respondent : Mr. V. Haribabu,
Additional Government Pleader(Taxes)

C O M M O N   O R D E R

Mr. Haribabu, learned Standing Counsel takes notice for the respondent. By consent of both learned counsel these Writ Petitions are disposed of finally at the stage of admission.

2. The challenge in W.P.No.4493 of 2019 is to an order of assessment for the period 2014-15 dated 08.01.2019 and in W.P.No.4498 of 2019 is to an order dated 05.02.2019 passed by the Assessing Officer in response to a petition under section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') dated 31.01.2019.

3. The petitioner is a Private Limited Company and is an assessee for the purposes of levy of Value Added Tax, on the file of the sole respondent herein. The petitioner is a trader in computer hardware and peripherals and filed regular monthly returns for the period 2014-15. The provisions of section 63-A provide for the auditing of accounts in certain specified instances by a Chartered Accountant. In the present case, the petitioner is admittedly subject to such audit. Form WW - Audit Report in terms of section 63-A of the Act was filed on 31.12.2015. A notice dated 27.12.2016 had been issued by the respondent to the petitioner pointing out certain errors in the aforesaid Form.

4. Admittedly, there appear to have been certain errors that had crept into the preparation of Form WW and the Chartered Accountant who had prepared the same, albeit with errors, corrected the same and filed a revised Form in pursuance to notice dated 27.12.2016, on 29.12.2016. The notice of the respondent dated 27.12.2016 had also called upon the petitioner to appear for a personal hearing in the matter on 10.01.2017 at 11.00 a.m. before the Assistant Commissioner (CT), Valluvarkottam Assessment Circle.

5. The petitioner brought to the notice of the Assessing Officer, by letter dated 10.01.2017 that it was not in a position to attend the personal hearing fixed by the Assessing Officer and made a request for re-scheduling of the hearing to after 15.01.2017.

6. The Assessing Authority thereafter issued another notice dated 02.11.2018 styled as 'Final Hearing Notice & Personal Hearing Intimation' setting out a proposal for assessment that proceeded on the basis that no proper verification of stock wise purchases and sales had been done by the petitioner. According to the Assessing Officer, the details found by the department at the time of enquiry and at the time of Audit by the Enforcement wing of the Commercial Taxes Department clearly revealed that there was no match between the purchases and sales and thus the notice alleged that the petitioner was engaged in bill trading activity and had availed of an inflated and incorrect amount of

Input Tax Credit. The petitioner was thus called upon to explain why the Input Tax Credit claimed for the period of 2014-15 not be disallowed. The notice stated that objections were to be filed on or before 21.11.2018 under threat of the proposal being confirmed along with levy of penalty.

7. On 20.11.2018, the petitioner wrote to the Assessing Officer stating that the Chartered Accountant was travelling to Vedaranyam to take stock of the damage caused by the Gaja Cyclone and it thus sought fifteen (15) days time to prepare and present their case. However, on 08.01.2019, the impugned order of assessment was passed confirming the proposal in the show cause notice and communicated along with demand notice for payment of the disputed tax and penalty.

8. On 31.1.2019, the petitioner has filed a petition, which, though styled as 'Petition for re-opening of assessment' requests that the Assessing Authority may examine the case, correct the arithmetical errors and waive the demand made. Inter alia, the petitioner has made various submissions with regard to the reconciliation of sales and purchase that is the major item of dispute and has also pointed out certain errors in the assessment itself.

9. Vide impugned order dated 05.02.2019 the assessing officer proceeds to reject the petition cursorily directing the petitioner to approach the Appellate Forum. The respondent quotes the provisions of Section 51(1) of the Act stating that the power to re-open rests only with the Appellate Authority, viz., Appellate Deputy Commissioner.

10. It is as against the aforesaid two orders that the petitioner is before this Court.

11. I have heard learned counsel. The petitioner in this case has all along been appearing before the authorities and appears to be co-operating in the completion of the assessment. No doubt some adjournments have been sought but the reasons adduced for the seeking of the same do not give me the impression that the petitioner was purposely delaying the proceedings. The issue in respect of which details have been sought, being the reconciliation of sales and purchase figures, is a technical one, and one calling for the assistance of a professional. The reason for the non-availability of the Chartered Accountant is also a legitimate one, as seen from the letter of the petitioner dated 20.11.2018 stating that the CA had rushed to Vedaranyam to attend to the devastation caused in the wake of the Gaja cyclone. Perhaps the assessing authority could have waited or at least informed the petitioner that he does not intend to wait in which case the petitioner may have made alternate arrangements, but the assessing officer did neither choosing to pass the impugned order on 21.11.2018 itself.

12. Even thereafter, the petitioner has approached the Assessing Authority with a petition for rectification under section 84 though styled as a petition for 'reopening of assessment' and enclosing details in support of its stand that the sales and purchases were, in fact, reconciled. The rejection of this petition by the respondent quoting the provisions of Section 51(1) relating to appeal is hyper technical and not proper. The prayer specifically requests 'rectification' and there appears no doubt in my mind that the petition is one filed in terms of the provisions of Section 84 of the Act.

13. Thus, in the interests of justice, I direct the Assessing Officer to take up for hearing petition dated 31.01.2019 under Section 84 of the Act, afford due opportunity to the assessee and dispose the same in accordance with law.

14. At this juncture, Mr.Haribabu, learned Additional Government Pleader points out that the provision does not provide for opportunity except in instances where the Assessing Officer proposes to enhance the assessment. The provisions of Section 84 empower the assessing officer to initiate proceedings for rectification of errors in an assessment. Inherent therein is the entitlement of an assessee to seek rectification of errors in an assessment. In such an event, I am of the view that the assessee should be heard personally prior to the officer either effecting the rectification or rejecting the same. This all the more so in a case such as the present one where the matter involves factual and arithmetic details that have to be presented with explanations to the assessing authority. The Officer will thus, afford an opportunity of personal hearing prior to disposing the rectification application.

15. The petitioner is directed to appear before the Assessing Officer on 04.03.2019 at 10.30. a.m and the assessing officer will adjudicate upon and dispose the petition in accordance with law and within a period of four (4) weeks from the date of conclusion of the personal hearing.

16. Impugned order dated 08.01.2019 will not be disturbed and W.P.No W.P.No.4493 of 2019 challenging the same is dismissed. Impugned order dated 05.02.2019 is set aside and W.P.No.4498 of 2019 is allowed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn/sl

To

The Assistant Commissioner (ST)
Valluvar Kottam Assessment Circle
No.10 Palaniappa Maaligai
Greams Road, Chennai-600 006.

+1cc to the Government Pleader (Taxes), S.R.No.15692
+1cc to Mr.N.Inbarajan, Advocate, S.R.No.14331 (28/02/2019)

W.P.Nos.4493 & 4498 of 2019
and
WMP.No.5075 of 2019

RV(CO)

rrs 22/02/2019