IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.4243 & 4244 of 2012
and
M.P.Nos.1 & 1 of 2012

Shan Tyres,
Represented by its Proprietor,
A.S.Anver Basha,
2 & 3/4 M.C.Road,
Ambur - 635802. ...Petitioner in both WPs

Vs.

The Assistant Commissioner (CT),
Ambur. ...Respondent in both 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 on the files of the respondent herein in his TNGST No.4261732/2005-2006 dated 30.04.2011 and TNGST No.4261732/2006-2007 dated 30.04.2011 and to quash the same with the direction to the respondent herein to redo the assessment as per their representation dated 06.02.2012 and to consider the other evidences relating to local purchases and resale of the goods specified in the First Schedule to the Act without reference to proof for earlier sufferance of tax.

For Petitioner : Mr.K.Narayanan
(in both WPs)

For Respondent : Mr.V.Haribabu
(in both WPs) Additional Government Pleader

C O M M O N O R D E R

The petitioner claims that they were not aware of passing of the assessment order, since the pre-assessment notice was served on a person who was looking after the business premises and the said person is not connected with the firm.

2. The learned counsel for the petitioner submitted that the petitioner therefore had sought for revision of the assessment

enclosing the relevant ledger of the sales, which has not been properly appreciated by the respondents.

3. The learned Additional Government Pleader appearing for the respondent, on the other hand submitted that what was furnished by the petitioner was only a monthly summary for the period between 01.04.2005 to 31.03.2006 and that they had failed to furnish the details of purchases in support of the petitioner's claim as the second sales and for the earlier sufferance of tax delivery date. The learned Additional Government Pleader also submitted that the notice as well as the order were duly served in accordance with law and Rule contemplated under the Sales Tax Rules and there is no infirmity insofar as the service of notice and the order is concerned.

4. This Court is not in agreement with the submission of the petitioner, regarding service of notice. As submitted by the learned Additional Government Pleader, what Rule 52 contemplates is that the service of notice should be on the dealer or a manager or an agent or the legal practitioner appointed to represent the dealer. In the instant case, the petitioner admits that the notice was served on a person who was looking after the business premises and as such he could be treated as an agent of the proprietary concerned. As such, the respondents cannot be found fault with insofar as the service of notice is concerned.

5. Likewise, this Court, is also in agreement with the submission of the learned Additional Government Pleader that the details of purchases in support of the petitioner's claim as second sales were not produced and the document relied upon by the petitioner before this Court is only a monthly summary.

6. At this juncture, the learned counsel for the petitioner would submit that they are in possession of all the relevant documents including details of purchases in support of the claim of the second sales and that if a lenient view is taken and another opportunity is extended to the petitioner, they would co-operate with the respondents.

7. Though, this Court does not strictly find fault with the impugned order in connection with the grounds raised by the petitioner herein, I am of the view that the petitioner could be afforded with one more opportunity to produce the necessary documents to substantiate his claim for the purpose of revising the assessment.

8. In the light of the above observations, the impugned orders dated 30.04.2011 in TNGST No.4261732/2005-2006 and TNGST No.4261732/2006-2007 are hereby set aside and the matter is remanded back to the respondent herein for reconsideration of

the assessment order already made. The petitioner is also granted liberty to file additional objections along with relevant documents which he intends to rely upon for the purpose of seeking for revision of the assessment, which shall be done within a period of two weeks from the date of receipt of copy of this order. The respondent shall thereafter consider the petitioner's objections, along with the documents furnished by him, if any, as expeditiously as possible. Accordingly, the Writ Petitions stand disposed of. Consequently, the connected miscellaneous petitions are closed. No costs.

sni

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Ambur.

+1cc to Mr.N.Inbarajan, Advocate, SR.No.60928/19
+1cc to the Govt.Pleader, Vide Sr.No.61506/19

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Kak(12/09/2019)