IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.7573 of 2019
and
W.M.P.No.8215 of 2019

M/s.Ponny Stores,
Rep.by its Proprietor Mr.T.P.Ganapathy,
No.37, Pondy Bazaar
T.Nagar, Chennai - 600 017. ..Petitioner

vs

The State Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 006. ..Respondent

Prayer: Writ Petition 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/33761581792/2012-13 dt.31/12/2018, quash the same and further direct the respondent not to abdicate his quasi-judicial functions by implementing the directions of the Deputy Commissioner (CT) Enforcement (Central) in Ref.No.1/2016-17 dt.03/06/2017, but follow the assessment procedure mandated under section 27(1) of the Tamilnadu Value Added Tax Act, 2006 and thereafter pass assessment order after granting an real and effective opportunity including personal hearing and pass such further order or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(Taxes)

O R D E R

Mr.V.Sundareswaran, learned counsel on record, on behalf of the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) who accepts notice on behalf of the sole respondent are before this Court.

2. With consent of both the learned counsel, main writ petition itself is taken up and is being disposed of though this matter is listed before this Court under the caption 'ADJOURNED ADMISSION' today.

3. Short facts shorn of elaborations and detailed particulars or in other words bare minimum facts which are imperative for disposal of instant writ petition are that writ petitioner is carrying on business in 'Utensils' in the name and style of 'Ponni Store' and writ petitioner is registered with the respondent as a dealer under the 'Tamil Nadu Value Added Tax Act, 2006' ['TNVAT Act' for the sake of brevity].

4. Writ Petitioner was originally assessed for the assessment year 2012-13. This assessment was by way of self assessment (deemed assessment) on the basis of turnover reported by the petitioner. Therefore, it follows that there was no examination of books of accounts by the respondent during this assessment year. Be that as it may, the business premises of the writ petitioner was inspected by the Enforcement Wing authorities of the respondent department. This was on 15.02.2017. Statements were recorded on 27.03.2017. Post inspection by the Enforcement Wing authorities, certain proposals were made by Enforcement Wing resulting in demand of tax for the aforesaid assessment year.

5. To be noted, in the instant writ petition, we are concerned with assessment year 2012-2013.

6. Based on the proposals given by the Enforcement Wing, respondent issued revisional notice dated 24.10.2017 and the writ petitioner responded to the revisional notice vide a letter dated 10.11.2017 and requested for two months time to submit their reply.

7. Thereafter the respondent responded vide further communication dated 13.11.2017 and time was granted to the writ petitioner till 29.12.2017.

8. Notwithstanding the above mentioned undisputed position, respondent passed an assessment order. The assessment order passed by the respondent is called in question in the instant writ petition primarily on the ground that the objections of the writ petitioner have been rejected summarily in one sentence without giving any reason as to why and how the objections are rejected.

9. Be that as it may, the more important ground on which the assessment order is assailed is that the respondent has merely reiterated the proposal given by the Enforcement Wing without

making an independent assessment. According to learned counsel for petitioner, assessment independent of Enforcement Wing proposal is imperative. Learned counsel also submits that the position that the respondent should necessarily make an assessment independent of the proposal given by the Enforcement Wing of the department has been laid down by this Hon'ble Court in a judgment reported in 2015 81 VST 560, in the case of Tvl. Narasus Roller Flour Mills v. The Commercial Tax Officer (Enforcement Wing), Sankagiri ['Narasus Roller' for the sake of brevity]. To be noted, this judgment was by a Hon'ble Single Judge of this Court and this judgment was passed by relying on an earlier Division Bench judgment of this Court in the case of Madras Granites Pvt Ltd Vs. CTO., reported in 146 STC Page No.642 ['Madras Granites Case' for the sake of brevity]

10. Most relevant part of 'Narasus Roller' judgment is articulated in two paragraphs, therein which read as follows:

> 'After considering the entire facts placed before this court, this court is fully convinced that the assessing officer has clearly abdicated his quasijudicial power. The honourable Division Bench of this court, in the case of Madras Granites (P) Ltd.v.Commercial Tax Officer, Arisipalayam Circle, Salem reported in [2006] 146 STC 642 (Mad), considered the question as to the manner in which the assessing officer has to proceed with the assessment even though reopening of the assessment was pursuant to a proposal submitted in form D3 by the inspecting officer. The honourable Division Bench pointed out that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities, the same are not sustainable in law.
>
> The above decision of the honourable Division Bench of this court is squarely applicable to the facts of the petitioner's case. The assessing officer has been solely guided by the proposal given by the inspecting officer, thereby, there was no independent application of mind and duties enshrined on the assessing officer under the provisions of the Act have been given a go-by. Further, when the representations were made by the petitioner stating that the records which are produced had to be taken back for want of time and they are willing to produce the records, the assessing officer should have afforded an opportunity to the petitioner to produce their records and it is erroneous on the part of the assessing officer to have come to the Conclusion that the claim made by the

> petitioner stating that they are having all original bills and the same may be verified and further action dropped is only an after thought. Furthermore, the observation that personal, hearing need-not be granted is perverse as it is contrary to the provisions of the statute and contrary to the settled legal principles.'

11. After laying down the aforesaid ratio in 'Narasus Roller', this Court set aside the impugned orders and directed the authorities concerned to assess afresh.

12. This Court had also put in a clear caveat and directed the authorities, not to be guided solely by the proposals submitted by the inspecting Enforcement Wing authorities.

13. Notwithstanding the above obtaining position, a perusal of the impugned order reveals that the Assessing authority i.e., sole respondent has merely gone by the proposal given by the Enforcement Wing of the department. With regard to the detailed objections of the writ petitioner, in a cryptic manner, the Assessing authority has rejected the same without giving any reason as to why and how the same are rejected. The objections of the writ petitioner dealer have hardly been considered though this is a case of mismatch. What is of utmost importance is proposals of the Enforcement Wing have been confirmed without an independent assessment. This is set out in the impugned order in the paragraph preceding the operative portion, which reads as follows:

> 'In view of the above, I have no other option except to confirm the proposals even after affording sufficient opportunity were also granted to the dealers.'

14. As alluded to supra, 'Narasus Roller' principle was laid down by a Hon'ble Single judge of this Court, by following Hon'ble Division Bench judgment rendered in 'Madras Granites case' referred to supra.

15. The aforesaid legal position is not disputed by the learned Additional Government Pleader. In other words, there is no disputation that 'Narasus Roller' principle is now governing the field.

16. In the light of the narrative supra, this Court passes the following order:

> a) The impugned assessment order dated 31.12.2018 bearing TIN/33761581792/2012-13 is set aside.

b) Respondent is directed to assess afresh, after giving a personal hearing to the petitioner's duly authorized representative and after giving opportunity to the petitioner to file requisite records and documents.

c) Respondent shall make assessment afresh, independent of the proposals given by the Enforcement Wing, i.e., in tune with Narasus Principle.

d) The aforesaid exercise of assessment afresh shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

17. Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kak

To

The State Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 006.

+1 cc to Mr.V.Sundareswaran, Advocate, S.R.No.62879

+1 cc to the Spl. Government Pleader(Taxes), S.R.No.63008

W.P.No.7573 of 2019
and
W.M.P.No.8215 of 2019

RV(CO)
SSM(09/09/2019)