In the High Court of Judicature at Madras

Dated : 24.4.2019

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1431 of 2019 & CMP.No.9875 of 2019

M/s.Sridhar and Co., rep.by its
Proprietor U.Sridhar, Ambur,
Vellore District ...Appellant/Petitioner

Vs

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

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 18.1.2019 made in W.P.No.1104 of 2019. Praying to issue a writ of certioari to call for the records on the file of the Respondent in his impugned proceedings made in TIN.No.33754261568/2011-12 dated 19/11/2018 and quash the same as illegal and contrary to the scheme of the Act.

For Appellant : Mrs.R.Hemalatha

For Respondent : Mr.Mohammed Shaffiq, SGP(T)

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mrs.R.Hemalatha, learned counsel for the appellant and Mr.Mohammed Shaffiq, learned Special Government Pleader accepting notice for the respondent.

2. This appeal is directed against the order dated 18.1.2019 passed by the learned Single Judge in W.P.No.1104 of 2019.

3. The appellant filed the said writ petition challenging the assessment order passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2011-12.

4. The learned Single Judge, by the impugned order, directed the appellant to avail the appeal remedy.

5. It is not in dispute that the appellant paid tax immediately after the premises of the appellant was inspected for a period of three days commencing from 10.5.2017. The revision notice was issued on 24.9.2018 proposing equal time

addition and penalty.

6. The learned counsel for the appellant has vehemently contended that equal time addition is totally unwarranted. In support of her contention, she has relied upon the decisions in the cases of

(i) Jayalakshmi Oil Mills Vs. State of Tamil Nadu [reported in 58 VST 535];

(ii) S.R.S.Industries Vs. State of Tamil Nadu [reported in 42 VST 166];

(iii) Nokia India Private Limited Vs. Deputy Commissioner (CT)-IV, Large Tax Payers Unit, Egmore, Chennai [reported in (2015) 79 VST 137];

(iv) Deputy Commissioner Vs. Ramasamy Chettiar [reported in 38 STC 382]; and

(v) State of Tamil Nadu Vs. S.M.Baba Sahib [reported in 44 STC 299].

7. It is further contended that the Assessing Officer did not independently consider the materials placed by the appellant before him and therefore, abdicated his statutory powers as an Assessing Officer. By placing reliance on the decisions in the cases of (i) Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri [reported in (2015) 81 VST 560] and (ii) Madras Granites (P) Ltd. Vs. Commercial Tax Officer, Arisipalayam Circle, Salem [reported in (2006) 146 STC 642], it is submitted that when the Assessing Officer, who is a Quasi Judicial Authority failed to exercise his quasi judicial function of completing the assessment, such assessment orders are liable to be struck down. Furthermore, the learned counsel has relied upon a circular, in which, certain guidelines have been laid down to be followed by the Assessing Officer as to under what circumstances, equal time addition can be made.

8. In our considered view, all these issues can be raised before the Appellate Authority and we find that there is no error in the order passed by the learned Single Judge.

9. Accordingly, the writ appeal fails and is dismissed. The time granted by the learned Single Judge is extended by a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

RS

To

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

+1cc to Ms.R.Hemalatha, Advocate SR.No.39767

+1cc to Special Government Pleader (Taxes)SR.No.39663

WA.No.1431 of 2019 &
CMP.No.9875 of 2019

SKV(CO)
GMY(06/06/2019)