IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.11685 of 2019
and WMP No.11909 of 2019

Tvl.Manimaran Stores
No.70/11-A Jambai Road
Manalurpet
Tirukoilur Taluk
Villupuram District - 605 754
Represented by Proprietor
K.Manimaran ..Petitioner

vs.

1.The Commercial Tax Officer
Tirukoilure
Villupuram District.

2.The Commercial Tax Officer
Enforcement (Group-II)
Cuddalore. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceeding of the 1st respondent in TIN-33034762193/2016-17 dated 17.11.2017 and quash the same and consequently direct the respondents to conduct fresh enquiry and passes assessment order for the year 2016-17.

For Petitioner : Mr.B.Ramesshkumar

For Respondents : Ms.G.Dhanamadhri,
Government Advocate.

ORDER

Mr.B.Ramesshkumar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of both the respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and is being disposed of.

3. To be noted, first respondent has filed a counter affidavit dated 08.06.2019.

4. Subject matter of instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of brevity, convenience and clarity.

5. This Court is informed that writ petitioner is a dealer in cement, iron and steel. Writ petitioner is a dealer under TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment.

6. When things stood as above, business premises of writ petitioner was inspected by Enforcement Wing Officers on 13.04.2016 and certain discrepancies with regard to 'Assessment Year 2016-17' (hereinafter 'said AY' for the sake of brevity, convenience and clarity) were found.

7. Thereafter, second respondent, who is a Commercial Tax Officer forming part of the Enforcement Wing, issued a notice dated 26.04.2016 mentioning that it was noticed at the time of inspection that writ petitioner has failed to keep and maintain true and correct accounts. It was also pointed out that there was sales suppression. Writ petitioner, vide this notice issued by the second respondent, was called upon to express writ petitioner's willingness to have the offence compounded. To this, writ petitioner sent a reply stating that they are willing to have the offence compounded. The second respondent also sent a draft compounding notice and a compounding order came to be passed fixing a compounding fee of Rs.2,000/-.

8. When things stood as above, first respondent issued a revisional notice dated 19.10.2017. In this revisional notice, discrepancies noticed at the time of inspection, proposal for revised assessment as well as for levy of penalty were set out and the writ petitioner was called upon to file objections if any, in writing along with documentary evidences. More importantly, writ petitioner was also given an opportunity of personal hearing and it was mentioned that 06.11.2017 shall be the date of personal hearing.

9. The reply sent by the writ petitioner to aforementioned revisional notice is significant. Writ petitioner sent a reply dated 30.10.2017. In this cryptic reply, writ petitioner submitted that they have no objections for the proposal. More

importantly, writ petitioner has stated that if the first respondent proceeds to pass any revised assessment order, writ petitioner will seek remedy through a Court.

10. To be noted, this reply from the writ petitioner i.e., reply dated 30.10.2017 from the writ petitioner to aforementioned revisional notice dated 19.10.2017 is in Tamil and the relevant concluding paragraph reads as follows:

> "எனக்கு எவ்விதமான ஆட்சேபனை ஏதும் இல்லை, இருப்பினும் 2016/17 ம் ஆண்டிற்கான தணிக்கையின் படி ஏதேனும் நிலுவை வரி செலுத்திட ஆணை ஏதும் வழங்கப்பட்டால் நான் நீதிமன்றத்தின் மூலம் பரிகாரங்களுடன் பெற்றுக்கொள்கிறேன் என்பதை தெரிவித்துக்கொள்கிறேன்."

11. In the aforesaid backdrop, it is submitted that owing to the reply sent by writ petitioner to the revisional notice, first respondent had no option other than proceeding with the revisied assessment on the basis of available records. The first respondent proceeded on the basis of available records and passed a revised assessment order on 17.11.2017, details of which have been set out supra and which is the impugned order. As already mentioned supra, the revised assessment order being impugned order is under Section 27 of TNVAT Act.

12. The obtaining position that the first respondent had to proceed with available records owing to the stand taken by writ petitioner i.e., stand of the writ petitioner, that they have no objections, that they will seek remedy through Court if revisional assessment orders are passed and more importantly, that writ petitioner did not avail personal hearing though granted are all not in dispute. This is articulated in one paragraph in the impugned order, which reads as follows:

> 'The dealer is having received the notice, have not filed any objection to the proposal opportunity of personal hearing was also proposed. They have stated in his 30.10.2017 dated letter that they have not filed any valid objections and valid document to consider the proposal. They have approached the Court and get relief on this proposal, where the demand raised against him. Therefore, I have no other go except to confirm the proposal.'

13. Counter affidavit of first respondent referred to supra sets out several details and most of these are on merits.

14. In the light of the narrative thus far, this Court is of the considered view that it is not necessary to advert to these submissions on merits.

15. First respondent cannot be found fault with for passing the impugned order, as writ petitioner dealer has sent a reply saying that writ petitioner has no objections to make qua the proposal and the writ petitioner will approach the Court if revised assessment order is passed. One more reason as to why first respondent cannot be found fault with is, personal hearing granted to writ petitioner (though a date was clearly specified) has also not been availed of by writ petitioner.

16. Now the submissions that are being made before this Court in assailing the impugned order are in the nature of merits of the matter and they turn on facts.

17. This Court is of the considered view that this writ petition is bereft of merits, there is no ground to interfere with the impugned order and the writ petition is liable to be dismissed.

18. However, it is open to writ petitioner to file a statutory appeal against the impugned order under Section 51 of TNVAT Act, subject to limitation and subject to pre-deposit condition thereunder if the writ petitioner chooses to do so.

19. If writ petitioner chooses to file a statutory appeal, it is open to the appellate authority to deal with this matter on merits.

20. Writ petition is dismissed, albeit, preserving the rights of the writ petitioner to file statutory appeal under Section 51 of TNVAT Act subject to limitation and subject to pre-deposit conditions thereunder. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Commercial Tax Officer
Tirukoilure
Villupuram District.

2.The Commercial Tax Officer
Enforcement (Group-II)
Cuddalore.

+1cc to Mr.B.Ramesh Kumaar, Advocate, S.R.No.61803
+1cc to the Government Pleader, S.R.No.62438

W.P.No.11685 of 2019
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VBA(CO)

RRS(29/08/2019)