IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2019

CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.15258 of 2019
and
W.M.P.No.15249 of 2019

Leewan Precision Private Limited
Rep by its Managing Director,
KIM KWONSU
No.137, Valayur Village,
Thiruvallur - 602 105. ..Petitioner

vs

Assistant Commissioner(CT)
Thiruvallur Assessment Circle,
No.6/6, Lal Bhaghadur Shastri Road,
Periyakuppam, Thiruvallur - 602001. ..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 impugned proceedings of the respondent passed in TIN-33761722442/2011-12 dated 29.04.2019 and quash the same, and further direct the respondent to redo the assessment on the above in accordance with law.

For Petitioner : Mr.N.Murali

For Respondent : Ms.G.Dhanamadhri
Government Advocate(Taxes)

O R D E R

Mr.N.Murali, learned counsel on record, on behalf of the sole petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate(Taxes) accepts notice on behalf of the sole respondent.

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

3. Short facts shorn of elaborations and detailed particulars or in other words bare minimum facts which are necessary for disposal of instant writ petition are that petitioner is a manufacturer of Automobile parts and 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. Petitioner was originally assessed for the assessment years 2010-11 to 2015-16(6 assessment years). 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 these assessment years. 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 20.07.2016. Post inspection by the Enforcement Wing authorities, certain proposals were made by the Enforcement Wing for demanding tax for the aforesaid six assessment years.

5. To be noted in the instant writ petition, we are concerned with assessment year 2011-2012.

6. Based on the proposals given by the Enforcement Wing, respondent issued pre revision notice dated 17.10.2016 and writ petitioner responded to the pre revision notice vide a letter dated 07.12.2016, setting out all its objections.

7. Thereafter, fresh notice was issued on 28.12.2018 and the petitioner responded vide communication dated 07.03.2019. In this reply dated 07.03.2019, writ petitioner enclosed the earlier common reply dated 07.12.2016 and reiterated the contents of the same.

8. Notwithstanding the above mentioned undisputed position, respondent passed assessment orders. The assessment orders passed by the respondent are 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 that no supporting documents have been filed, 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, this 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 rendered by a Hon'ble Single Judge of this Court and this judgment was rendered 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 has also put in a clear caveat and directed the authorities, not to be solely guided by the proposals submitted by the inspecting authorities. 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 reply / objections dated 07.12.2016 of the writ petitioner, the Assessing authority has held in a cryptic manner that no documents in support of the same have been filed, without any discussion as to how and why the objections are not tenable.

13. 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. It is brought to the notice of this Court that 'Narasus Sarathy Enterprises Private Limited case' has also been subsequently followed by another learned Single Judge of this Court in the case of Asian Building Materials Private Limited Vs. State Tax Officer, a unreported judgment made in W.P.(MD).No.5209 to 5212 of 2019 vide an order dated 06.03.2019.

14. The aforesaid legal position is not disputed by the Revenue counsel. In other words, there is no disputation that 'Narasus Sarathy Enterprises Private Limited case' principle is now governing the field.

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

a) The impugned assessment order dated 29.04.2019 bearing TIN-33761722442/2011-12 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.

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

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kak

To

Assistant Commissioner(CT)
Thiruvallur Assessment Circle,
No.6/6, Lal Bhaghadur Shastri Road,
Periyakuppam, Thiruvallur - 602001.

+1cc to Mr.N.Murali, Advocate, S.R.No.45600
+1cc to the Government Pleader, S.R.No.46534

W.P.No.15258 of 2019

GP(CO)

RRS(22/07/2019)