IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.6006 of 2014
and
M.P.No.1 of 2014

Sri Krishna Textiles,
Represented by its Proprietor,
P.M.Subramaniam,
No.222, Thambi Thottam,
Ammapalayam,
Palladam-641 664,
Tirupur District. ... Petitioner

Vs.

The Commercial Tax Officer,
Palladam Assessment Circle,
Palladam,
Tiruppur District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records on the files of the respondent in TIN.No.33716241360/12-13 dated 26.12.2013 and quash the same as being contrary to the principle of natural justice, without jurisdiction and authority of law and further direct the respondent to pass order afresh as requested by the petitioner vide his representation dated 25.1.2014 and reminder letter dated 17.2.2014.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.M.Hariharan
Government Advocate

ORDER

The learned counsel for the respondent circulates a copy of the order of the learned Single Judge dated 21.06.2016 in W.P.No.4179 of 2013, relating to the period 2011-2012 passed in identical circumstances as in the present writ petition.

2.The earlier writ petition was closed granting the petitioner liberty to prefer an appeal before the appellate authority and if such appeal were preferred within 30 days from the date of receipt of a copy of the order, directing the Registry to entertain the appeal without reference to limitation. For the sake of consistency and in the light of the admission by the learned counsel for the petitioner to the effect that the facts and legal position involved in both the concurrent years i.e. 2011-2012 and 2012-2013 are identical, I propose to close this writ petition also with the same direction.

3.The order of the learned Single Judge in the earlier writ petition is extracted herein for the sake of clarity:

> "3.The petitioner has filed this Writ Petition challenging the order of assessment for the year 2011-12 under the provisions of the Tamil Nadu Value Added Tax, 2006. The only reason given by the petitioner for bypassing the appeal remedy is that, without providing the documents sought for, the respondent has proceeded to complete the assessment.
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> 4.On a perusal of the reply given by the petitioner to the show cause notice dated 27.9.2012, it is seen that the petitioner has requested the respondent to provide details of the check post records through which the said consignment has been transported and the person in-charge of the vehicle and also the copy of the documents accompanied with the transport and opportunity for cross examination of the persons who have transported the consignment and the office who made the physical verification.
>
> 5.Admittedly, the petitioner seeks for records maintained by check post and other documents whereas the impugned assessment has been made based on the verification of bills wherein it is found that the petitioner has maintained two seal bill books, one for the sales of cone yarn and another for sales of hank yark. Though the petitioner has given a cheque for Rs.15,00,000/-, to the enforcement officials accepting the liability subsequently he filed a Writ Petition in W.P.No.19603 of 2012 and the cheques have been returned pursuant to the order passed therein on 31.7.2012.
>
> 6.Be that as it may, mere issuance of the cheques cannot be a ground for admission of the liability. However, the reasons assigned by the Assessing Officer have been made after analyzing the materials which are placed before him. Therefore, to assess as to whether the finding recorded by the Assessing Officer are borne out by records, the assessment files and connected records have to be perused and

the dispute has to be verified to examine as to whether there are any discrepancies. These issues cannot be considered in a Writ Petition filed under Article 226 of the Constitution of India. Therefore, this Court is of the view that the petitioner should file a statutory appeal before the Appellate Authority."

4.Mr.Senniappan, learned counsel for the petitioner then circulates a copy of an appellate order dated 20.02.2017, which is in favour of the assessee. An appeal appears to have been filed at the instance of the Revenue before the Tamil Nadu Sales Tax Appellate Tribunal and by order dated 28.02.2018, the Revenue appeal has been dismissed. He also states that no opportunity was granted by the assessing authority at the time of conclusion of assessment. No dispute is raised in regard to this factual position. Thus I set aside the impugned assessment order, directing the petitioner to appear before the assessing authority on Wednesday, the 23rd October, 2019 at 10.30 a.m. without expecting any further notice in this regard. Upon consideration of the appellate orders dated 20.02.2017 and 28.02.2018, the assessing authority shall pass orders in line therewith, after determining identity in facts and legal position.

5.This writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Palladam Assessment Circle,
Palladam,
Tiruppur District.

Copy to:

The Section Officer,
E.R Section,
High Court, Madras

+1cc to Special Government Pleader(Taxes) sr.84490
+1cc to Mr.R.Senniappan, Advocate sr.84295

W.P.No.6006 of 2014
and
M.P.No.1 of 2014

jp(co)
nr 17/10/2019
nr 18/10/2019