BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2019

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.5280 of 2019
and
W.M.P.(MD)No.4218 of 2019

Tvl.Sri Rajasthan Metal,
Represented by its Proprietor
Nopsingh, aged about 38 years
S/o Peersinghji,
No.14, Swamy Sannathi Street,
Thirunelveli Town-627 006. ... Petitioner

-vs-
1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The State Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District - 627 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TNVAT No.3366564191/2013-14, dated 21.12.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.A.Thiyagarajan
Government Advocate

O R D E R

The instant writ petition has been filed challenging the order dated 21.12.2018 passed by the second respondent in TNVATNo.33665641491/2013-14.

2.The petitioner is a registered dealer under TNVAT Act. It is his case that for the assessment year 2013-14, taxable turnover is Rs.77,25,172/- and the original cum deemed assessment for the subject assessment year was deemed to be completed on 31.10.2014 under Section 22(2) of TNVAT Act.

3.It is the case of the petitioner that pursuant to the inspection of his business premises by the Enforcement Wing Officials on 03.10.2015, the second respondent revised the assessment under Section 27 of the Act and passed the revised assessment order on 31.03.2017 by reversing the input tax credit mistakenly claimed twice and levied interest for the same.

4.It is the case of the petitioner that pursuant to an alleged scrutiny, the second respondent further issued revision of assessment notices dated 11.07.2018 and 31.07.2018 proposing to again revise the assessment on the alleged ground that sale reported by the petitioner differs from the turnover reported by the other two purchasing dealers and proposed to levy additional tax as well as penalty against the petitioner for suppression of sales. According to the petitioner, the second respondent directed the petitioner to appear before him along with accounts on 15.08.2018 i.e. on a public holiday.

5.It is the case of the petitioner that they have not suppressed any sales to the respondents. Since the proposed tax was only Rs.9,528/-, the petitioner was willing to pay the said amount to the respondent even though they were not liable to the pay the said tax as per the proposed revision of assessment. According to the petitioner, they were shocked to receive another revision of assessment notice dated 23.08.2018 from the second respondent proposing to add equal time addition to the entire reported turnover of Rs.77,25,172/- and also proposed to levy penalty under Section 27 (3)(c)of the TNVAT Act in addition to tax of Rs.3,024 reducing the earlier tax amount of Rs.9,528/-.

6.According to the petitioner, he submitted a detailed reply denying all the allegations of the second respondent and also filed corroborated documentary evidence along with the reply and requested the second respondent to drop the proposals made by them for revision of assessment. In the reply, he has made it very clear that if the second respondent is not satisfied with the reasons filed by him, a detailed enquiry by the Assessing Officer may be conducted as per the dictum laid down in the ***JKM.Graphics Solution Pvt. Ltd reported in 99 VST page 343*** and also requested for a personal hearing.

7.It is the case of the petitioner that on the same date of reply sent by him, another revision of assessment notice dated 11.10.2018 was received by him calling upon him to come for personal hearing and in that notice, the respondent has stated that the revision of assessments proposals are not based on MIS report and the same is based on scrutiny of the petitioner's monthly returns. The petitioner also sent a reply on 23.10.2018 explaining that once the alleged difference is pursuant to comparing returns filed by selling and purchasing dealer, intra departmental enquiry as per dictum of the Division Bench judgement cited supra is necessary and the petitioner once again made it clear that no addition shall be levied to the turnover as there are no fresh materials available to the respondent for revision of assessment.

8.It is the case of the petitioner that even though detailed objections were raised by the petitioner, the second respondent ignored the same under the impugned assessment order dated 21.12.2018. In such circumstances, the instant writ petition has been filed.

9.Heard Mr.B.Rooban, the learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents.

10.The learned counsel for the petitioner drew the attention of this Court to the decision of the Hon'ble Supreme Court of India, dated 03.05.2016 in ***Ravi Prakash Refineries (P) Ltd. Vs. State of Karnataka*** wherein the Hon'ble Supreme Court held that without availability of fresh materials, the respondent are not entitled to issue revision of assessment.

11.The next judgment relied upon by the learned counsel for the petitioner is ***(1995) 97 STC 442 (AP) Girdharlal & Company Vs. State of Andhra Pradesh*** wherein according to the petitioner unless and until fresh materials are available before the Assessing Authority, no revision of assessment can be done.

12.The next judgment relied upon by the learned counsel for the petitioner is that ***(1998) 109 STC 631(AII) Parikh and Sons Vs. Trade Tax Officer***. In the said ruling, the Hon'ble Allahabad High Court held that mere change of opinion is not a ground for revsion of assessment.

13.The learned counsel appearing for the petitioner drew the attention of this Court to the reply dated 11.10.2018 wherein the petitioner has categorically stated that there is no suppression of sales and that they have disclosed all the particulars to the respondent while furnishing their monthly returns. They have also stated that proposal to revise assessment to levy additional tax of Rs.9,528/-, which was subsequently reduced to Rs.3,024/- by another revision assessment notice is not maintainable in law.

14.It was also made clear in their reply that since tax amount involved was only Rs.9,528/-, they were prepared to pay the said amount. However, the second respondent by their revised assessment notice dated 23.08.2018 proposed to to add equal time addition to the entire reported turnover of Rs.77,25,172/- and penalty under Section 27(3)(c)of TANVAT Act. According to the petitioner, all these objections were not considered and therefore, the impugned assessment order has to be quashed.

15.Per contra, the learned Government Advocate for the respondent would submit that there has been suppression of sales by the petitioner. He drew the attention of this Court to the assessment order wherein the second respondent in his order has observed that the copies of the bills were not produced and the petitioner failed to appear before the second respondent during the assessment proceedings. Since the suppression of sales came to the knowledge of the second respondent only after the earlier revision of assessment order dated 31.03.2017, the second respondent is entitled to issue one more revision of assessment notice on the petitioner and pass the assessment order.

16.In the case on hand, it is not disputed that a proposal was made by the second respondent to revise the assessment for the assessment year 2014-15 against the petitioner on 11.07.2018. As per the said proposal, an addition in taxable turnover of the petitioner for the said assessment year was assessed and tax amount came to Rs.95,559/- for the turnover. The second respondent proposed to levy tax at the rate of Rs.9,528/-.

17.On receipt of proposal dated 11.07.2018, proposing to revise the assessment, the petitioner also expressed his willingness to pay the said amount, as seen from his reply dated 20.08.2018. In the reply dated 11.10.2018, the petitioner has given para-wise explanation for non-liability of tax as per the proposed revision of assessment. It was made clear in the reply filed by the petitioner that no fresh set of materials are available with the second respondent for revising the assessments. A detailed explanation was given by the petitioner regarding the discrepancy made by them in their reported sales.

18.It is also the case of the second respondent that new materials are available with them in order to make revision of assessment against the petitioner. All the bills referred in the assessment order were very much available even at the time of original assessment and the subsequent revision.

19.The assessment pertains to the year 2013-14 whereas after first revision of assessment, which was completed on 31.03.2017, the second respondent has proposed to revise the assessment once again on 11.07.2018, which is concluded by the impugned assessment order dated 21.12.2018.

20.As rightly pointed out by the learned counsel appearing for the petitioner as seen from the judgments cited supra, mere change of opinion without new or fresh fact de-horse the records, will not entitle the Assessing Officer to revise the assessment order.

21.Further in the instant case, the second respondent has proposed to revise the assessment for the second time on the same scrutiny of returns filed by the petitioner, which was very much available at the time of the original deemed assessment as well as in the revision of assessment order dated 31.03.2017 and the first revision of assessment order dated 31.03.2017.

22.Considering all these factors, this Court is of the considered view that there is total non-application of mind by the second respondent before passing the impugned assessment order. Therefore, this Court is of the considered view that the impugned order has to be quashed and accordingly, the impugned assessment order dated 21.12.2018 made in TNVAT No.3366564191/2013-14 is hereby quashed and this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The State Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District - 627 002.

+1 cc to Special Government Pleader, SR.No. 53241
+1. C.C. to M/S.B.ROOBAN, Advocate SR.No. 53220

W.P.(MD)No.5280 of 2019
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KK/17.05.2019/5P/5C