BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.03.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.16158 of 2015

&

M.P.(MD) No.1 of 2015

M/s.S.M.Mobile Care,
Rep., by its Proprietor Mr.R.Sundar,
186 - A, First Floor,
North Veli Street,
Madurai 625 001 ... Petitioner

-vs-

The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangarajan Salai,
Madurai 625 020 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the impugned proceeding of the respondent passed in TIN No.33736263756/2014-15 dated 31.07.2015 and quash the same in assessing the turnover of Rs.23,81,788/- at 14.5% relating to the addition and equal time estimation of sales suppression and proposed levy of penalty at 150% on actual sales suppression.

For Petitioner : Mr.R.R.Ramesh Bapu

For Respondent : Mr.N.Shanmugaselvam,
Additional Government Pleader

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O R D E R

The instant writ petition has been filed challenging the assessment order dated 31.07.2015 passed by the respondent in TIN No.33736263756/2014-15.

2. It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act with effect from 11.11.2014. It is his case that he received a notice from the respondent on 07.04.2015 under Section 25(1) of the TN VAT Act, 2006 calling upon him to pay tax of Rs.3,45,359/- and further the respondent has also proposed to levy penalty at 150% amounting to a sum of Rs.2,59,019/- as per the said notice.

3. It is the case of the petitioner that he sent a reply dated 12.05.2015 to the respondent denying his liability and in the said reply, he has categorically stated that prior to getting their business registered under the TN VAT Act 2006, they were rendering services of getting orders from Amazon and providing supporting services to send the goods by the suppliers directly to the customers after raising proper invoice in compliance with law. Therefore, they have made a categorical stand that no sales were made by them to Amazon Sellers Services Private Limited as alleged by the respondent in their notice dated 07.04.2015. Thereafter, the impugned assessment order dated 31.07.2015 was passed wherein, according to the petitioner, the respondent has not applied his mind to the objections raised by the petitioner in his reply dated 12.05.2015. But instead, without giving any reasons has wrongly observed that the petitioner has effected sales in favour of Amazon Sellers Services Private Limited, which is not true. Aggrieved by the impugned assessment order, the instant writ petition has been filed.

4. The respondent has also filed a counter affidavit before this Court wherein they have submitted that notice dated 07.04.2015 sent by them to the petitioner was issued only under Section 22(4) of the TN VAT Act 2006. It is their case that mere mis-quoting of provisions of law will not vitiate the assessment proceedings and therefore, the impugned assessment order has only rightly been passed under section 22(4) of the TN VAT Act, 2006. It is their case that the petitioner has suppressed the sales transaction with Amazon Sellers Services Private Limited, Chennai which is also admitted in the reply sent by the petitioner. Further, it is the case of the respondent that alternate appellate remedy is available to the petitioner and without availing the same, the petitioner has filed this writ petition which according to the respondent is not maintainable.

5. Heard Mr.R.R.Ramesh Bapu, learned counsel appearing for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondent.

6. As seen from the reply dated 12.05.2015 to the notice dated 07.04.2015, the petitioner has categorically stated that prior to the registration under the TN VAT Act 2006, he was rendering services of getting orders through Amazon and providing supporting services to send the goods by the suppliers directly to the customers after raising proper invoice in compliance with law and that no sales was effected to Amazon as alleged by the respondents in their notice dated 07.04.2015.

7. Admittedly, the petitioner's business was registered under the TN VAT Act, 2006 only on 11.11.2014 and the impugned assessment order was passed on 31.07.2015 wherein, the respondent has observed that sales was effected by the petitioner to Amazon Seller Services

Private Limited from April 2014 to December 2014. As the petitioner was registered under the TN VAT Act, 2006 only on 11.11.2014, it is impossible for the petitioner, to have made the sales for the period prior to the registration under the TN VAT Act, 2006.

8. Instead of considering the objections raised by the petitioner by applying his mind, the respondent even without any basis has observed that the dealer has effected sales to Amazon Seller Services Private Limited, whereas the petitioner has categorically taken a stand in his reply that no sales was effected to Amazon Sellers Private Limited and he was only an intermediary. In the impugned assessment order, the respondent has not applied his mind regarding the said objections but has erroneously observed that the petitioner has accepted the sales to Amazon Sellers Service Private Limited.

9. Further in the impugned Assessment order, a proposal has been made by the respondent to levy penalty at 150% of the tax due on the suppressed sales and turn over amounting to Rs.2,59,019/-. The assessment order must be an affirmative order and there cannot be a proposal to levy penalty. If at all there is suppression of sales by the petitioner, then, in the assessment order itself, the penalty ought to have been imposed against the petitioner, but in the impugned assessment order, the respondent has only proposed to levy a penalty, which is not permissible under law.

10. In the light of the above observations, this Court is of the considered view that the respondent has violated the principles of natural justice by not considering the objections raised by the petitioner and also by total non-application of mind, has given an erroneous finding that the petitioner has accepted the sales to Amazon Sellers Services Private Limited, even though in the reply they have categorically denied the purchase and have stated that they acted only as an intermediary, that too, prior to the registration of their business under the TN VAT Act, 2006. The respondent has also recorded the sales pertaining to the period prior to the date of registration of the petitioner's business under the TN VAT Act, 2006 without application of mind. Therefore, this Court is of the considered view that impugned assessment order has to be quashed.

11. In the result, the impugned assessment order dated 31.07.2015 passed by the respondent in TIN No.33736263756/2014-15 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall consider the objections raised by the petitioner in his reply dated 12.05.2015 objectively, after giving sufficient opportunity to the petitioner including granting the right of personal hearing and shall pass final orders within a period of eight(08) weeks from the date of receipt of a copy of this order.

12. With the aforesaid directions, this **Writ Petition is disposed** of. No costs. Consequently, M.P.(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangarajan Salai,
Madurai 625 020.

1 CC to M/s.R.R.RAMESH BABU, Advocate (SR-51424[F]dated 04/03/2019)

+1 CC to M/s.SPL GP (SR-51762[F] dated 05/03/2019)

+1 CC to M/s.SPL GP (SR-51978[F] dated 06/03/2019)

Order made in
W.P.(MD).No.16158 of 2015

04.03.2019

DS/ /SAR- (09.04.2019) 4P 4C