BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18595 of 2015
and
M.P.(MD)No.1 of 2015

Sri Ramakrishna Agencies,
Rep. by its Proprietor S.Ramakrishnan,
No.159 & 160, Chitrakara Street,
Madurai. ... Petitioner

vs.

The Commercial Tax Officer,
Chitrakara Street Assessment Circle,
Madurai - 20. ... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33904920455/2011-12 dated 15.09.2015 and quash the same as invalid, illegal and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

O R D E R

Heard the learned counsel on either side.

2.The validity of the impugned order bearing TIN:33904920455/2011-12 dated 15.09.2015 passed by the respondent is under challenge in this writ petition. The petitioner is a dealer in all kinds of edible oil. The subject matter pertains to the assessment year 2011-12. The petitioner was deemed to have been assessed accepting the turn over reported in the returns at Rs.6,38,92,832/- filed in Form I returns for the said year. While so, the business places of the petitioner were simultaneously inspected by the enforcement wing officers on 14.12.2013. According to the enforcement wing officials, certain discrepancies were noted and there was sales suppression also. They took the stand that the total sale turn over was below Rs.5.00 crores and hence exempted from tax for the said assessment year 2011-12 and collection of tax on such exempted goods was a clear violation of the provisions of the statute. It was therefore proposed to revise the assessment and also levy penalty. In this regard, notice was issued to the petitioner. The petitioner vide letter dated 12.08.2015 lodged their objections. The petitioner was also given an opportunity of personal hearing. The stand of the petitioner was rejected and the impugned order came to be passed calling upon the petitioner to pay tax of Rs.8,55,021/-. Penalty was also levied at Rs.8,45,761/-.

3.The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of the petition and wanted this Court to interfere. Per contra, the learned Government Counsel submitted that the impugned order does not warrant any interference.

4.I carefully considered the rival contentions. The respondent issued notice dated 15.07.2015 proposing to revise the assessment and also to levy penalty. In response thereto, the petitioner lodged their objections dated 12.08.2015 and 01.09.2015. The petitioners had emphasized that the respondent must independently verify their books of accounts and thereafter take a decision in the matter. It is true that the petitioners were given an opportunity of personal hearing. But then, the defence of the petitioner has been summarily dealt with by holding that the petitioner had accepted and admitted the defects pointed out when the surprise inspection took place.

5.I am afraid that such a course of action cannot be appreciated. If what happened during surprise inspection alone can be the basis for revising the assessment, there was no need for the respondent to even issue a subsequent show cause notice. A surprise inspection conducted by the enforcement wing officials can be the spring board for taking action. It is quite possible that when such raids and inspections take place, the assessees were under coercion or fear might have made some payments. But on that score, the entire defence cannot be condemned. The respondent is an independent quasi judicial authority. He will have to independently analyze all the relevant materials and account books and thereafter come to a considered conclusion. The assessing authority cannot go entirely by the proposals of the enforcement wing. The petitioner had repeatedly denied their liability. The petitioner had taken the stand that during the relevant assessment year, their turn over was above Rs.5.00 crores and that there was no misconduct committed by them in collecting tax. The stand taken by the petitioner necessitated verification of their account books by the respondent. Such an exercise was not undertaken. Therefore, I hold that the impugned order is liable to be interfered with for the violation of the principle of natural justice. It is accordingly set aside. The matter is remitted to the file of the respondent. All that the respondent needs to do is to give one more opportunity of personal hearing and based on verification of books of accounts and thereafter pass orders afresh.

6.The writ petition is allowed on these terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Chitrakara Street Assessment Circle,
Madurai - 20.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-40071[F] dated 03/01/2019)

+1 CC to M/s.SPL GP (SR-40137[F] dated 03/01/2019)

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SPU (09.06.2020) 3P-4C