BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18611 of 2015 and
M.P.(MD)No.1 of 2015

S.K.Ramkumar,
Civil Works Contractor,
10-G, Singarayar Colony North Street,
Bibikulam,
Madurai - 2. ... Petitioner

Vs.

The Assistant Commissioner(C.T.),
Chokkikulam 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 33215001296/2008-09 dated 14.08.2015 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.

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O R D E R

The petitioner is a civil works contractor. The subject matter pertains to the assessment year, namely, 2008-2009. The petitioner had filed his returns and they were assessed on a deemed assessment basis. Subsequently, pre-revision notices were issued and orders dated 28.02.2013 were passed under Section 27(1) of the T.N.V.A.T. Act. The petitioner did not contest the said orders revising the assessment. Thereafter, for the second time, pre-revision notices were issued under the very same provision, namely, Section 27(1) of the T.N.V.A.T. Act. The petitioner offered his reply. Not satisfied with the same, the orders impugned dated 14.08.2015 came to be passed. Challenging the same, these Writ petitions have been filed.

2. Heard the learned counsel appearing for the Writ petitioner and the learned Additional Government Pleader appearing for the respondent.

3. According to the respondent, the claim of the petitioner ought not to have been allowed. Therefore, the respondent wanted this Court to sustain the order impugned in this Writ petition.

4. As rightly contended by the learned counsel appearing for the petitioner, the petitioner had filed his returns and they were assessed on a deemed basis. They were subjected to revision under Section 27(1) of the T.N.V.A.T. Act and the orders were passed on

28.02.2013. This is the second revisional exercise. As rightly pointed out by the learned counsel appearing for the petitioner, on a mere change of opinion, such an exercise cannot be undertaken. The petitioner had made certain claims. The assessing authority in the first instance thought it fit to allow the same. Even when the assessment was subjected to a revisional exercise, the assessing authority did not deem it fit to change his opinion. Therefore, there cannot be one more revisional exercise undertaken in respect of the very same assessment. If at all, the Joint Commissioner exercising powers under Section 53 of the T.N.V.A.T. Act could have initiated proceedings in this regard. But in this case, the very same assessing officer has chosen to undertake the second revision. This is impermissible in law. It is not the case of the respondent that the Writ petitioner had indulged in suppression of material facts. This cannot be characterised as a case of escaped assessment. All the materials were very much available from the beginning. No new material was discovered warranting one more revision under Section 27 of the Act.

5. This Court posed a specific question to the learned Additional Government Pleader as to when the audit objection was made. There is no response to this query. The learned counsel appearing for the petitioner states that when he made an application for refund, the second revisional exercise was undertaken. I am therefore of the view that the very exercise is without jurisdiction.

6. In this view of the matter, the order impugned in this Writ petition stand set aside. The Writ petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To
The Assistant Commissioner(C.T.),
Chokkikulam Assessment Circle,
Madurai - 20.

+1 CC to SPECIAL GOVERNMENT PLEADER SR.No. 40156.

W.P.(MD)Nos.18611 of 2015 and
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02.01.2019
(2/2)

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