BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.19087 of 2015
and
M.P.[MD]No.1 of 2015

Tvl. Subburaman Iron & Steel Pvt. Ltd.,
Represented by its Executive Director,
D.S.Balachandran, aged about 51 years,
S/o. D.V.Subburaman,
No.64-A, Gandhiji Road,
Dindigul - 624 001. : Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Commercial Taxes,
St. George Fort, Chennai - 600 009.

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

3.The Assistant Commissioner (CT) - III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the third respondent in TIN No.33195241479/2013-14 dated 10.09.2015 and quash the same and to consequently direct the second respondent to re-do the assessment afresh by some other competent officer after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the assessment order dated 10.09.2015 passed by the third respondent in TIN No.33195241479/2013-14.

2.The brief facts leading to the filing of the instant writ petition are as follows:

2.1.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. It is their case that for the previous assessment years, even without proposing the reasons for revision of assessment in the pre-revision notice, the third respondent passed the assessment order including matters which were not mentioned in the pre-revision notice. The third respondent issued a pre-revision notice dated 17.12.2014, wherein he proposed to revise the assessment under Section 27 of the TNVAT Act, 2006 against the petitioner, since, it was the same assessing officer, who had issued pre-revision notice. But, in the assessment order certain new items were included and the petitioner gave a complaint before the Joint Commissioner, Commercial Taxes Department, Madurai, making allegations against Mr.Jawahar Ali, the Assistant Commissioner (CT) (III), Dindigul, stating that they have apprehension that once again, the said Assistant Commissioner will pass an assessment order including matters which are not subject matter of the pre-revision notice.

2.2.According to the petitioner, the said complaint is still pending with the Joint Commissioner. It is the case of the petitioner that the reply to the pre-revision notice dated 17.12.2014, was not sent by the petitioner only due to the said reason. But, without waiting for the outcome of the enquiry pending before the Joint Commissioner, arbitrarily, the third respondent represented by Mr.Jawahar Ali, passed the impugned assessment order dated 10.09.2015. Aggrieved by the same, the instant writ petition has been filed.

3.Heard Mr.B.Rooban, learned Counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader.

4.According to the learned Counsel for the petitioner, the only ground raised in this Writ Petition is that the petitioner has a grievance against Mr.Jawahar Ali, the Assistant Commissioner (CT-III), Dindigul who was the assessing officer. According to the learned Counsel for the petitioner, in the previous assessment, Mr.Jawahar Ali, Assistant Commissioner had passed assessment order against the petitioner outside the purview of the pre-revision notice. Therefore, according to the learned Counsel for the petitioner, the petitioner had given a complaint against the said officer before the Joint Commissioner and till date, the said complaint has not been considered by the Joint Commissioner.

5.According to the learned Counsel for the petitioner, only for the said reason, reply was not filed to the pre-revision notice dated 17.12.2014, issued by Mr.Jawahar Ali, Assistant

Commissioner (CT-III). According to the learned Counsel for the petitioner, not only the petitioner, there are various other dealers who have grievance against the same officer. According to the learned Counsel for the petitioner, another dealer has also given a complaint against the same commercial tax officer. Therefore, learned Counsel for the petitioner seeks for quashing of the impugned assessment order and remanding the matter back to the third respondent for fresh consideration in accordance with law.

6.Per contra, learned Additional Government Pleader for the respondents would submit that personal hearing was afforded to the petitioner in this case by notice dated 17.12.2014. Despite the receipt of the said notice, the petitioner neither filed a reply nor availed the personal hearing opportunity before the third respondent. Further, the petitioner without exercising the alternate appellate remedy, has approached this Court.

Discussion:

7.Admittedly, there is a complaint given by the petitioner against Mr.Jawahar Ali, the Assistant Commissioner (CT-III), the then third respondent, which is pending enquiry before the Joint Commissioner, Commercial Taxes Department, Madurai Division. Along with the complaint, enclosures were annexed which includes the previous pre-revision notices and the previous assessment orders for the earlier assessment years. According to the petitioner, in the previous assessment orders, new matters were included even though, the same was not the subject matter of the pre-revision notice. Further, according to the learned Counsel for the petitioner, the previous assessment order dated 03.12.2014 and 26.11.2014 were quashed by this Court in W.P.[MD]Nos.20275 and 20276 of 2014 dated 23.04.2018 and remanded back to the assessing officer for fresh consideration.

8.The contention of the petitioner in this Writ Petition is that Mr.Jawahar Ali, the then third respondent had the habit of including new matters in the assessment orders eventhough, the same were not part of the pre-revision notice. According to the petitioner, they apprehend that even for this assessment year, the said officer will pass an assessment order going beyond the scope of the pre-revision notice dated 17.12.2014. It is also not in dispute that the enquiry is pending on the file of the Joint Commissioner, Madurai, Commercial Taxes Department, insofar as the complaint given by the petitioner against Mr.Jawahar Ali, the then third respondent is concerned.

9.Considering all the above factors, this Court is of the considered view that an officer who assesses the returns of a trader must be beyond all suspicion. But in the instant case, eventhough the complaint was given by the petitioner against the alleged erring officer, till date, the Joint Commissioner, Madurai

Circle has not passed any final orders. In the light of the above observations, this Court is of the considered view that the impugned assessment order has to be quashed and the matter should be remanded back to the third respondent for fresh consideration in accordance with law.

10.In the result, the impugned assessment order is hereby quashed and the matter is remanded to the third respondent for fresh consideration in accordance with law. The third respondent shall afford sufficient opportunity to the petitioner to place all objections available to them under law by granting him the right of personal hearing and also permit the petitioner to file a reply to the pre-revision notice dated 17.12.2014. The third respondent shall pass final orders within a period of eight [8] weeks from the date of receipt of a copy of this order.

11.With the aforesaid directions, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes,
St. George Fort, Chennai - 600 009.

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

3.The Assistant Commissioner (CT) - III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001.

+1 CC to M/s.B.ROOBAN, Advocate (SR-56450[F] dated 25/03/2019)

MR

ORDER MADE IN
W.P.[MD]No.19087 of 2015
25.03.2019

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