BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD).Nos.14028 to 14034 of 2019
and
W.M.P(MD).Nos.10502 to 10508 of 2019

M/s.Taj Maligai,
Represented by its Proprietor
I.Jahubar Sadhik,No.6, Malluga Street,
Kumbakonam – 612 001,
Thanjavur District. ... Petitioner in all cases

Vs.

The Assistant Commissioner (CT)
Kumbakonam – IV Assessment Circle,
CT Buildings, Kumbakonam,
Thanjavur District. ...Respondent in all cases

Common Prayer: Writ petitions filed under Article 226 of Constitution of India praying to issue a writ of certiorari pertaining to call for the records of the respondent in TIN.No.33314081196 / 2008 - 2009, TIN.No.33314081196 / 2009 - 2010, TIN.No.33314081196 / 2010 - 2011, TIN.No.33314081196 / 2011 - 2012, TIN.No.33314081196 / 2012 - 2013, TIN.No.33314081196 / 2013 - 2014 and TIN.No.33314081196 / 2014 - 2015 Respectively dated 07.02.2019 which was received on 08.03.2019 and quash the same as illegal, arbitrary, without jurisdiction and also against the principles of natural justice.

For Petitioner in all W.Ps.	:	Mr.K.Soundararajan
For Respondent in all W.Ps.	:	Mrs.J.Padmavathi Devi Special Government Pleader

C O M M O N O R D E R

The petitioner is a dealer in cigarettes. He filed a return for the Assessment year 2008 -2009. This deemed to have been assessed on the self assessment basis as per Section 22(2) of the TNVAT Act, 2006 (in brevity “the Act”). He filed his monthly returns in Form K under Section 3(4) of the Act and he was paying tax at 0.5% for the said transaction. The Enforcement wing official conducted an inspection on 10.12.2014 and found the following defects:-

"*a) The inspecting officers had noticed that the purchases of Cigarette effected during the year 2014-2015 was not supported by the purchases bills and were not accounted for in the books of accounts.*

b) The inspecting officers had ascertained the stock of goods hold at the time of inspection by physical verification and verified the same with the opening stock held purchases and sales effected upto the day of inspection, by adopting trading account method in the absence of day-to-day stock account and noticed stock discrepancy.

c) Verification of trading / Profit Loss Account revealed that the dealer had failed to disclose a portion of output sales turnover in the returns filed for the year 2014-2015 and had not paid tax on the undisclosed taxable sales turnover."

2. On the basis of the same, the respondent issued a notice on 14.01.2016. The petitioner sought for records pertaining to the seller and also wanted to cross-examine. Opportunity for cross-examination was not given and therefore, he approached this Court by way of a writ petition.

3. This Court at an earlier occasion, directed the respondent to provide opportunity for cross-examining of the seller and decide in conformity of principle of natural justice. Accordingly, the petitioner was given an opportunity to cross-examine the seller on 20.12.2016. It was stated by the seller that he effected cash sales to some person who stated himself a representative of the petitioner. Basis on this, the respondent passed an impugned order re-determining the tax due as Rs.14,41,330/- and also imposed penalty under Section 27 (3) of the Act. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that on the face of the materials, it is seen that the seller has effected only cash sales to the 3rd party and there is no proof that it was effected to the petitioner. In the absence of proof of sales to the petitioner and cash purchase by petitioner, it should be held that return filed by the petitioner is correct. On presumption, the respondent has re-determined the tax and imposed penalty and the same, according to him, is liable to be set aside.

5. The learned Special Government Pleader appearing for the respondent would vehemently contend that the seller has categorically let in evidence that he sold the goods to the

petitioner and it was proved by his ledgers. Since the seller has not denied the sale to the petitioner, it should be construed that the purchase has been suppressed by the petitioner. Therefore, turn over was re-determined and penalty was rightly imposed by the respondent. Therefore, the order does not warrant any interference.

6. I considered the rival submission.

7. It is an admitted fact that the petitioner is a dealer in cigarettes and assessed as per Act. He filed monthly returns in Form K under Section 3(4) of the Act and paid taxes at 0.5% as provided under the Act. Pursuant to an inspection by the Enforcement wing officials, certain defects were found. On that basis a revision notice was issued by the respondent. Thus far there is no dispute. The dispute arose only when the accounts of the seller was verified. If disclosed that goods were sold in favour of the petitioner without purchase bills. The seller would depose that he effected cash sales. The relevant portion of the assessment order is extracted as under:-

> *"During cross examination Tvl.Valli & sons had not denied the sales, but they deposed that a person introducing himself as a representative from Taj Maligai bought cigarettes against cash. But, we are not aware that the individual is from Taj Maligai. So, there is no satisfactory material proof on the side of Tvl.Taj Maligai to deny their purchase. As an add on to this view is that, both the dealers are having business transactions and both have admitted the same. Hence, Tvl.Taj Maligai failed to prove that they have not effected the above purchase with satisfactory proof."*

8. The reading of this order clearly shows that the seller has sold the cigarettes to some 'X' who claimed that he is the representation of the petitioner. There is no affirmative statement that the person was identified as the representative of the petitioner. Relying on Section 72 of the Act, the respondent would state that the burden of proof is on the dealer to prove that he has not suppressed the purchase or sales. It is true that burden is on the dealer to discharge the sales suppression or wrongful assessment in normal circumstances. But in the instant case, the seller would simply state that he effected cash sales. The cash sales was effected to somebody who claimed himself as representative of the petitioner. There is no concrete proof that the seller has sold the goods only to the petitioner. In such circumstances, compelling the purchaser to prove he has not purchased goods, will amount to forcing him to prove the negative. To discharge the burden, there shall be materials to show that unaccounted goods were found available or excess stock was there

without purchase bills. Unless it is substantiated against the dealer, the authority cannot expect the dealer to discharge the burden. In that view, the person who makes a positive statement shall prove the same. In other words, the burden of proving the statement is on the respondent.

9. Non denial of a fact by the seller will not amount to proof. There shall be some positive statement by the seller affirming that he had sold goods only to the petitioner and the petitioner has suppressed purchase transaction. Atleast there shall be some material to show that the petitioner used to purchase goods without bills through the said representative. Lest the representative of the petitioner should have been identified. If that is proved then the dealer will be liable to pay difference in tax and imposing of penalty is also justified. But in the instant case, the statement of the seller is not sufficient to draw adverse inference that the petitioner has suppressed the purchase. In that circumstance, the impugned order on the basis of presumption is not sustainable and therefore, the same is set aside.

Accordingly, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To
The Assistant Commissioner (CT)
Kumbakonam - IV Assessment Circle,
CT Buildings, Kumbakonam,Thanjavur District.

+1 CC to M/s.SPL GP (SR-95438[F] dated 01/11/2019)

+1 CC to M/s.K. SOUNDARARAJAN, Advocate (SR-95631[F] dated 01/11/2019)

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W.M.P(MD).No.10502 of 2019
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