BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2019**

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.12862 of 2015
and
M.P.(MD)No.1 of 2015

K.S.T.Agencies,
Rep.by Propritor S.Gowrimanohari,
No.42, West Street,
Ayyampettai,
Papanasam Taluk. ...Petitioner

-Vs-

The Commercial Tax Officer,
Papanasam. ...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent and quash the impugned proceedings in TIN/33423841982/2014-2015 dated 07.07.2015.

For Petitioner : Mr.P.R.Kumar
For Respondent : Mr.A.Thiyagarajan, Government Advocate

ORDER

The impugned assessment relates to the period 2014-2015. The petitioner received a notice as well as a revised notice from the respondent proposing the assessment of turnover of Rs.70,58,349/- along with penalty. The proposal of purchase suppression was made on the basis of a web report. No reply has been issued by the petitioner, in this regard. This prompted a third revision notice dated 22.06.2015 to which a reply (undated) was filed by the petitioner as follows:

'We are in receipt of your revised notice issued in your reference cited in which you have proposed assess on a estimated Total and Taxable Turnover Rs.75,87,316 with the tax effect of Rs.11,00,161. Besides this you have also proposed to levy a penalty of Rs.16,50,241 under the section 22(5) of the Act. In this connection we wish to bring the following objections against your proposals.

In fact, we are a Registered Dealer in the books of your Office since July 2014. Regarding the filing of returns, we have appeared before you and represented that due to system fault in our computer, we were not able to 'E-Filing' our monthly returns since July 2014 and requested you to accept the manual returns. To this, you have suggested to file monthly returns through one Mr.Ramaiyan an account. Accordingly we handed over the papers to Mr.Ramaiyan as suggested by you. But before filing the return to office through Mr.Ramaiyan, suddenly you have issued a notice and revised notice alleging that we have not disclosed the turnover at all, and estimated our turnover to your best of Judgment as proposed above, we enclose herewith the monthly returns for the months of July 2014 to March 2015 along with a cheque for Rs.59,447/- towards the tax due for 2014-15 and interest payable there on. We prepare to pay the Compounding fees for belated filing of monthly returns as may be fixed by you.

In view of the above facts, we request you to kindly accept the returns and drop your proposal of best Judgment assessment and levy of penalty.'

2.The respondent, however, vide a one line order, simply states that the returns are not acceptable. The contents of the reply extracted above stood rejected and the enclosed cheque returned to the petitioner. On the basis of the aforesaid cryptic rejection, the respondent thereafter passes the impugned order of assessment dated 07.07.2015 confirming the proposals for assessment including penalty, calling upon the petitioner to remit the tax of Rs.11,06,161/- and penalty of Rs.16,50,241/- at 150% of the tax which is assailed in this writ petition.

3.Admittedly, the petitioner has not filed monthly returns and is hence a defaulter. While the proposal initiated for assessment cannot be faulted, it is clear that sufficient opportunity has not been provided to the petitioner to make its submissions, prior to completion of the proceedings for assessment. This is all the more so since the proposal itself is based on a departmental web report.

4.No personal hearing has been afforded to the petitioner prior to passing of the impugned order. I am thus inclined to set aside the impugned order dated 07.07.2015 for the aforesaid reasons. Since the period of assessment is 2014-2015, the respondent is directed to conclude proceedings for assessment *denovo,* as expeditiously as possible. The petitioner will appear before the respondent on **08.08.2019 at 10.30 a.m.,** along with the returns of turnover for the periods in question. It is made clear that if there is no compliance by the petitioner on the aforesaid date, the respondent is at liberty to conclude the proceedings on the basis of available records including web reports. This exercise shall be completed, within a period of four weeks from 08.08.2019, that is, on or before 05.09.2019.

5.This Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

gns / tm

To

The Commercial Tax Officer,
Papanasam.

W.P.(MD)No.12862 of 2015
24.07.2019

srk(CO)
TR (07.08.2019) 3P 2C