BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.07.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD) Nos. 16023 and 16024 of 2015
and M.P(MD) Nos.1 and 1 of 2015

In both petitions:

M/s.A.M.N.Jewellers Private Limited,
Represented by its Director
S.Ganapathy ... Petitioner

Vs.

The Assistant Commissioner (CT),
Gandhi Market Assessment Circle,
Trichy. ...Respondent

Prayer : Writ Petitions are filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus calling for the records on the file of the respondent made in Tin No.33133381763/2011-2012 and 2012-2013 dated 25.03.2015 and quash the same as illegal and contrary to the Proviso to Section 27 of the TNVAT Act and direct the respondent to pass a assessment order afresh considering the reply dated 28.05.2014 after affording the opportunity of being heard.

In both writ petitions:
For petitioner : Mr.S.Karunakar
For Respondent : Mr.A.Thiyagarajan
Government Advocate

C O M M ON O R D E R

Heard Mr.A.Karunakar, learned counsel appearing for the petitioner and Mr.Thiyagarajan, learned Government Advocate appearing on behalf of the respondent.

2. Challenge is to an order of assessment dated 25.03.2015 passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2011-2012 and 2012-2013.

3.In response to a revision notice dated 14.05.2014 setting out various proposals for assessment, the petitioner filed a reply dated 28.05.2014 setting forth its explanations. The response was accompanied by voluminous annexures. The impugned order indicates receipt of the dealers' objections notwithstanding which proposals are confirmed on the basis of the results of surprise inspection of the officials of the enforcement wing on 04.03.2014 and 05.03.2014. The Assessing Officer sets out initially the results/alleged defects found in the course of surprise inspection being non-payment of taxes for the turnover of using vehicles, reversal of Input Tax Credit availed for the goods that, according to the Assessing Officer had expired and reversal of Input Tax Credit based on internal departmental report.

4. The operative portion of the order is rather cryptic reads as follows:

> The tax liability payable on account of "Reversal of inadmissible ITC" availed on the purchase noticed on surprise inspection has been admitted by Mr.S.Ganapathy Santhanam, Director of the business concern in his sworn deposition given before the Commercial Tax Officer (Enforcement) Group-I Trichy at the time of inspection.
>
> 4)To a show-cause notice issued to the dealer proposing non payment of tax payable on the sales turnover of used vehicle as detailed in para 2(a) nothing to offer in his letter of objection, hence the tax due of the Rs.5,600/- and penalty @ 50% of tax due Rs.2,800/- is confirmed.
>
> As per defect noticed as detailed in para 2(b), the dealer's reply has not been acceptable and hence the tax due of Rs.8,210/- is confirmed.
>
> As per defect notice in para 2(c) in his reply the dealer has filed to prove his genuineness of transaction with Tvl.Senthil Murugan Jewellery, hence, the ITC claimed of Rs.4,06,385/- has also been reversed.

5. The order is non-speaking, which indicates absolute non-application of mind and contains no independent reasons whatsoever for the conclusions arrived at. Such an order has necessarily to be quashed in the light of the settled position that an order of assessment imposing substantial liability upon an assessee has to contain reasons for the additions made therein.

6. On the basis of the aforesaid discussion, the impugned order of assessment dated 25.03.2015 for the periods 2011-2012 and 2012-2013 is quashed.

7. In fine, these writ petitions are allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Gandhi Market Assessment Circle,
Trichy.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-76071[F] dated 18/07/2019)
+1CC SPECIAL GOVERNMENT PLEADER, SR NO.76265

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and M.P(MD) Nos. 1 and 1 of 2015
17.07.2019

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