BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:05.08.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P(MD)Nos.10110 to 10112 of 2016
and W.M.P(MD)Nos.7923 to 7925 of 2016

John T.Mecteer
Proprietor
M/s.Golden Ceramics ... Petitioner

Vs.

The Commercial Tax Officer,
Thuckalay - 629 175
Kanyakumari District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari calling for the records relating to the impugned revision proceedings in ref.No.TIN.33716164148/12-13, 11-12, 10-11 dated 29.03.2016 together with a notice of assessment and demand under 'Form-O' and notice of Interest under 'Form-RR' for the assessment years 2012-2013, 2011-12, 2010-11 dated 29.03.2016 quash the same.

For Petitioner : Mr.K.Ragatheeshkumar
For Respondent : Mr.Thiyagarajan
Government Advocate

O R D E R

The petitioner challenges the order of assessment dated 29.03.2016 for the periods 2010-11, 2011-12 and 2012-13 in terms of the provisions of the Tamilnadu Value Added Tax Act, 2006 (in short 'Act').

2. The petitioner is before me in second round of litigation. Earlier he had filed W.P(MD) No.7740 of 2015 praying for a mandamus directing the Assessing Officer to consider its reply date 08.01.2014 to pre-assessment proposal and issue copies of various records as well as more particulars sought for by the petitioner prior to finalizing the assessment.

3.A pre-assessment notice dated 10.12.2013 issued by the respondents referred to an inspection by the enforcement team on 21st and 22nd of November 2012 noticing two(2) defects. The first defect is that inter-State purchases of ceramic tiles taken from the port-yard of Tuticorin, when compared with accounts of purchases disclosed in annexure-1 filed by the petitioner along with Form-1 returns, lead to a proposed addition on account of the purchase suppression and estimated gross profit. The second was stock difference of ceramic tiles noticed at the time of inspection.

4. The annexure to the pre-assessmnet notice lists a total 41 purchases all 'Golden Ceramics'. However, according to the petitioner, the name 'Golden Ceramics' has been used by multiple dealers, including by itself and only 18 out of 41 transactions relate to it as can be seen from the address, 'JTM plaza Azhagiamandabam'. Though there are other transactions involving dealers with the same name, the addresses are different and the petitioner is not connected or concerned with the same.

5. The petitioner had filed reply to the notice on 08.01.2014 and apprehending that the said reply would not be taken into consideration by the Officer, has sought and been granted mandamus by this Court on 30.04.2014 in W.P(MD)No.7740 of 2014 to the effect that the respondent was to consider the objection of the petitioner dated 08.01.2014 while finalizing the assessment.

6. Despite the aforesaid, the impugned order indicates the complete non-application of mind insofar as the respondent merely extracts the entire written submissions without even noticing the discrepancy pointed out by the assessee to the effect that out of 41 transactions 18 transactions relate to assessee.

7. The proposals are confirmed without any reasoning whatsoever. Such assessment is unacceptable in law and on facts. It was incumbent upon the authority to have considered the submissions of the petitioner prior to conclusion of the assessment specifically as the court had issued mandamus on 30.04.2014 to the officer 'to consider the representation' and not merely 'to extract the same'.

8. In these circumstances, the orders of assessement order dated 29.03.2016 for the periods 2010-11, 2011-12 and 2012-13 are quashed. The respondent is directed to re-do the assessments after taking note of the objections dated 08.01.2014 in a proper perspective and hearing the petitioner. A detailed, reasoned and speaking order shall be passed on merits within a period of eight(8) weeks from today.

9. These writ petitions are allowed in the abovesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Thuckalay - 629 175
Kanyakumari District.

+3 CC to Mr.T.CIBI CHAKRABORTHY, Advocate SR-80054.
+1 CC to SPL GP SR-79944.

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