BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.19680 of 2016
and W.M.P(MD) No.14195 of 2016

Tvl.Sandiyaa Exports,
Represented by its Proprietor,
A.Balaji .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nagar,
Bodinayakkanur,
Theni District - 625 513. ... Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned proceedings of the second respondent in TIN No. 33755081703/2013-2014/CST No. 138382 dated 21.09.2016 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

For Petitioner :Mr.R.Veera Manikandan
For Respondents :Mr.A.Thiyagarajan
Government Advocate

O R D E R

The order of assessment impugned relates to the period 2013-14 dated 21.09.2016 under the provisions of the Tamilnadu Value Added Tax Act, 2006 (in short 'Act').

2. Heard learned counsel for the petitioner and learned Government Advocate appearing for the respondents.

3. The petitioner is a dealer in Cardamom and purchases the same from auction houses. A pre-assessment notice has been issued on 16.10.2015 pursuant to an inspection and audit dated 18.12.2014 by the Enforcement wing. The notice alleges that during the audit, there was a verification of the check-post extract for the period in question for purchases of cardamom effected by the petitioner. This verification according to the respondents revealed unaccounted purchases. The names of the consignors, invoice numbers, dates, commodities and bill value were extracted in the notice. The quantum of alleged unaccounted purchases amounted to a sum of Rs.1,16,02,892/. The officer thus proposed to reject the assessees' accounts and returns as incorrect and incomplete and added the total alleged purchase suppression along with freight charges and gross profit @ 15% of a sum of Rs.17,40,434/-. The sales were computed at a sum of Rs.13,34,426/-. An equal addition was also made towards probable omission of 100% of the alleged actual suppression. Total alleged suppression was arrived at, at a sum of Rs. 3,72,39,836/-.

4. The petitioner replied on 24.11.2015 submitting that out of 16 transactions only 4 related to it, of total quantities amounting to Rs. 18,86,670/- for October 2013 and November 2013 and February 2014 (2,06,723 + 1,33,056 + 1,51,331 + 13,95,560) and aforesaid turnover had been returned in the monthly returns.

5. As far as the remaining 12 are concerned, the petitioner submitted that the auction centre at Kerala that had conducted the auctions in question, had confirmed that all purchase invoices related to other dealers. The details as supplied by the auction centres were forwarded to the Assessing Officer as follows:

S. No.	Name of the consignor and TIN	Invoice No.	Date	Commodity	Bill value in Rs.	Name of the consignee and TIN
1.	Header system India Ltd., Nedukandam 3260476315	562	14.06.13	Cardamom	1,12,109/-	Sri Renga spices, Thevaram 33775081304
2	South Indian Green Cardamom Company Ltd Vandanmedu 3260466009	1170	17.09.13	Cardamom	8,93,448/-	Byrav spices, Bodi 33635081575
3	Header system India Ltd., Nedukandam 3260476315	1320	03.10.13	Cardamom	13,73,618/- (5,03,935/- wrongly mentioned by you)	Srinivasa Spices Bodi 33535081824

4	South Indian Green Cardamom Company Ltd Vandanmedu 3260466009	1673	12.11.13	Cardamom	7,79,430 /-	Sri Prasanna Traders, Bodi 33445081825
5	South Indian Green Cardamom Company Ltd 3260466009	1740	19.11.13	Cardamom	6,11,073 /-	Shree Meenakshe & Co. Bodi 33145081861
6	K.C.P.Kumuly 3206046609	1696	15.12.13	Cardamom	2,08,978 /-	Sri Prasanna Traders Bodi 33445081825
7	The Cardamom Planters Marketing, Senthanpara 32061293807	1847	05.01.14	Cardamom	13,23,888/- (20,92,604/- wrongly mentioned by you)	Srinivasa Spices, Bodi 33535081824
8	The Cardamom Planters Marketing, Senthanpara 32061293807	1613	13.01.14	Cardamom	15,03,542/-	Amutham Cardamom Agency Bodi 33575081608
9	K.C.P.Kumuly 3206046609	1958	19.01.14	Cardamom	13,66,415/-	Sri Poorna Spices, Bodi 33885081583
10.	K.C.P.Kumuly 3206046609	1965	19.01.14	Cardamom	10,29,031/-	Venuss Herbo Armatics Pvt Ltd., Seithur 33606041940
11.	South Indian Green Cardamom Company Ltd Vandamnmedu 3260466009	2346	18.04.14	Cardamom	53,997/-	Ganesaan Traders Bodi 33845081605
12	Header system India Ltd., Nedukandam 3260476315	2679	27.03.14	Cardamom	5,61,660 /-	Eswar Spices Bodi 33845081702

6. Thus, according to the petitioners, the proposed addition on account of the aforesaid twelve(12) dealers ought to be cancelled. As regards the four (4) other transactions of purchase, the same had been duly reported in the monthly returns and the present proposal thus amounted to double taxation.

7. The petitioner sought an opportunity to cross-examine the consignors mentioned in the notice and also sought copies of transport bills, copy of payment and despatch details in regard to the twelve (12) transactions. The written submission concluded with a request for a personal hearing, enclosing as annexures the auction sale notes issued by the auction houses at Kerala in relation to the twelve(12) transactions.

8. It is in these circumstances that the impugned order dated 21.09.2016 has been passed. The entirety of the assessment comprises of mere extracts of the assessment proposals. The Assessing Officer states that the assessee has filed a reply on 24.11.2015, but rejects the same by means of a single line, stating as follows:

> The dealer objection in respect of Check post Mis Match and request to not to levy penalty cannot be considered. Hence, the notice is confirmed and finally assess the dealer as follows:

9. It is appalling that the impugned order of assessment proceeds to fasten tax liability of Rs.14,53,811/- along with penalty of Rs.21,80,717/- in such a careless and cursory fashion. None of the principles at play for framing of an assessment, such as consideration of the objections filed, grant of opportunity for personal hearing or application of mind by the assessing officer find place in the impugned order. The impugned assessment does not take into account any of the detailed submissions made by the petitioner in regard to the sixteen (16) transactions. There has been gross violation of the principles of natural justice insofar as the specific request for the personal hearing has also been ignored. In all, the order indicates gross mis-application and non-application of mind.

10. In these circumstances, the impugned assessment order is quashed. Though I am inclined to impose a cost upon the authority, I refrain from doing so upon his plea in this regard at time of passing of this order.

11. This writ petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

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

2.The Assistant Commissioner (CT),
Bodinayakanur Assessment Circle,
Commercial Tax Office,No.17,
Subburaj Nagar,Bodinayakkanur,
Theni District - 625 513.

+1 CC to M/s.B.ROOBAN, Advocate (SR-80015[F] dated 06/08/2019)

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