BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.08.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.9687 and 9688 of 2016
and W.M.P(MD) Nos. 7708, 7709, 9684 and 9685 of 2016

K.Radha ... Petitioner in W.P(MD)No.9687/16

C.Sankar ...Petitioner in W.P(MD)No.9688/16

Vs.

1.The State of Tamil Nadu
Represented by its Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk,
Chennai - 600 005.

3.The Deputy Commissioner (C.T),
C.T.Buildings,
Dr.Thangaraj Salai,
Madurai.

4.The Commercial Tax Officer,
West Veli street Assessment Circle,
C.T.Buildings,
Dr.Thangaraj Salai
Madurai. .. Respondents in both writ petitions

PRAYER in both writ petitions: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus to call for the records relating to the revision of Assessment order passed by the fourth respondent in his proceedings in Tin No.33165022130/2013-14 and TIN No.33055023985/2013-14 dated 28.04.2016 (received by the petitioenr on 02.05.2016) and quash the same and to direct the fourth respondent to pass fresh order after affording opportunity of personal hearing for the assessment year 2013-2014.

In both writ petitions:

For Petitioners : Mr.K.Vadivelu
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

COMMON ORDER

These writ petitions have been filed by different petitioners challenging orders of assessment dated 28.04.2016 relating to the period 2013-2014 passed in terms of the provisions of the Tamil Nadu Value Added Tax Act (in short 'Act').

2. Since the issue that arises is one and the same, these writ petitions are disposed by means of this common order.

3. Heard learned counsel for the petitioners and learned Special Government Pleader appearing for the respondents.

4.Mr.Vadivelu, learned counsel for the petitioner only canvasses the ground relating to non passing of a deemed assessment prior to passing of the impugned order which fact, according to him, vitiates the impugned assessment.

5. The procedure to be followed by the Assessing Authority for framing of the assessment is set out in terms of Section 22 of the Act. The relevant provisions are extracted hereunder:

> 22 (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.
> [(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and by proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year;
> Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, on which assessments orders are not passed shall be deemed to have been assessed on the 30th day of June 2012]
> (3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

Prior to the amendment made by the Fifth Amendment Act 23 of 2012, notified by G.O.Ms.82 as effective from 19th June 2012, the sub-section (2) was as under:

(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

6. Thus, a dealer is required to file monthly returns for the relevant period, in the prescribed manner. Sub Section (2) states that the Assessing Authority shall accept the returns filed if the same are accompanied by proof of payment of tax as well as the prescribed documents. Prior to the amendment of Section 22(2) by Act 23 of 2012, it was necessary for the officer to pass an order of assessment and post amendment and in the light of the proviso, orders of assessment are deemed to have been passed for the previous years as on the 31st day of October of the succeeding year. The import of the amendment to Sub section (2) by Act 23 of 2012 is that for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, where orders of assessment have not been passed. Such orders are deemed to have been passed on the 30th of June 2012.

7. In the light of the aforesaid, the arguments of Mr.Vadivel have no force and the writ petitions have no merit. Reliance on a decision of a Division bench of this Court in W.A No.720 of 2018 dated 19.04.2018 (in M/s Om Sai Intex Pvt. Ltd., Cheyyar Taluk, Tiruvannamalai District Vs. The Commercial Tax Officer, Tiruvannamalai District), is misplaced as it deals with the applicability of Section 84 of the Act and does not concern the issue in question at all.

8.Since interim protection has been granted to the petitioner in the matters from the time of admission, which is presently in force, liberty is granted to the petitioners to file appeals before the statutory authority. Such appeals, if filed, within a period of two weeks from today, shall be entertained by the appellate authority without reference to limitation and shall be disposed of in accordance with law.

9. In fine, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To,
1.The Secretary to Government, State of Tamil Nadu
Department of Commercial Taxes and Registration,
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2.The Commissioner of Commercial Taxes,
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Dr.Thangaraj Salai,Madurai.

4.The Commercial Tax Officer,West Veli street Assessment Circle,
C.T.Buildings,Dr.Thangaraj Salai,Madurai.

+2 cc to M/s.Mohamed Ibrabim Ali , Advocate SR.No.80637
+1 cc to The Special Government Pleader Sr.No.80667

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