BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.25393, 25395 to 25397 of 2019
and
WMP(MD)Nos.21955, 21959, 21957 & 21958 of 2019

M/s.Sree Mangayarkarasi Mills (P) Ltd.,
rep.by its Director M.Kannappan
.. Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Thirupparankundram Assessment Circle,
Madurai - 625 020. .. Respondent in all W.Ps.

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarifined Mandamus to call for the records of the respondent in his proceedings in TIN No. 33276232193/2007-08; 33276232193/2006-07 dated 31.10.2019; 33276232193/2008-09 dated 31.10.2019 and 33276232193/2009-10 dated 31.10.2019 quash the same as it is in violation of the principles of natural justice and contrary to the appeals order in AP Nos.152 of 2012, 3 of 2013, 153 of 2012 and 154 of 2012 dated 17.04.2015 and further direct the respondent to pass appropriate order in accordance with law.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mrs.S.Srimathy
Special Government Pleader
in all the writ petitions.

COMMON ORDER

These writ petitions have been filed challenging the impugned order of the respondent dated 31.10.2019, revising the assessment in respect of assessment years 2006 - 2007 to 2009 - 2010.

2.Mrs.S.Srimathy, learned Special Government Pleader takes notice on behalf of the respondent. By consent, the writ petitions are taken up for final disposal at the stage of admission itself.

3.The petitioner has filed appeals on 12.10.2012 against the assessment orders passed by the original authority. The appellate authority, in AP Nos.152 of 2012, 3 of 2013, 153 of 2012 and 154 of 2012, dated 17.04.2015 has partly allowed, partly dismissed and partly remanded the matters. While considering the order of remand, the Assessing Authority, has once again in exercise of his power, regardless of the relief granted by the appellate authority had imposed tax and penalty by way of the impugned order dated 31.10.2019. Aggrieved over the same, the petitioner is before this Court.

4.I have considered the submissions made on either side.

5.Once an appeal is filed challenging the order passed by the original authority, the original order merges with the appellate order. When the appellate authority sets aside a portion of the order, the Assessing Officer is bound by the order unless it is modified or set aside on further appeal he has no authority to revive the original penalty which was set aside. Further, the original authority while dealing with the order of remand, is not empowered to revisit with the order passed by the appellate authority, granting relief in favour of the appellant/petitioner. In the instant case, the Assessing Officer has revived his original order, despite it was set aside by the appellate authority. Such courses cannot be adopted by the Assessing Officer and therefore, the impugned assessment order passed by the respondent on 31.10.2019 is liable to be set aside, as it has been passed in excess of his powers and the matter is liable to be remitted back to the Assessment Officer/respondent herein for afresh consideration.

6.At this juncture, the learned counsel appearing for the petitioner would submit that the petitioner has already made payments towards tax. Despite the same, the Assessing Authority has not considered the payment already made and passed orders without application of mind.

7.In view of the above, the proceedings in TIN No. 33276232193/2007-08; 33276232193/2006-07 dated 31.10.2019; 33276232193/2008-09 dated 31.10.2019 and 33276232193/2009-10 dated 31.10.2019 are set aside and the matter is remitted back to the Assessment Officer/the respondent herein. The Assessment Officer shall restrain himself within the scope of the order of remand and pass orders within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner, and also taking into the account the payment made by the petitioner towards tax.

8.The writ petitions are disposed of accordingly. No costs. Consequently, WMP(MD)Nos.21955, 21959, 21957 & 21958 of 2019 are closed.

Sd/-

Assistant Registrar (AD I)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST),
Thirupparankundram Assessment Circle,
Madurai - 625 020.

+4 CC to Mr.R.D. GANESAN, Advocate (SR-102134 to 102137[F] dated 28/11/2019)

+1 CC to SPL GP (SR-102674[F] dated 29/11/2019)

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