IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.02.2020
CORAM
THE HONOURABLE Dr. JUSTICE ANITA SUMANTH
W.P.Nos.7258 to 7261 of 2018 and
WMP.Nos.9020 to 9023 of 2018

R.Amutha .. Petitioner in all WPs

Vs.

The Assistant Commissioner (ST),
Kaladipet Assessment Circle,
Thiruvottiyur,
Chennai-600 019. .. Respondent in all WPs

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the Respondent in TIN No.33281103846/2012-2013, TIN No.33281103846/2013-2014, TIN No.33281103846/2014-2015 and TIN No.33281103846/2015-2016 dated 07.02.2018 respectively and quash the same as illegal, arbitrary, without jurisdiction and against the principles of natural justice.

(In all WPs)
For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

The petitioner has challenged orders of assessment passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('Act') for the periods 2012-13, 2013-14, 2014-15 and 2015-16.

2.The petitioner claims to be a Works Contractor for the Corporation of Chennai and occasionally other Municipalities as well. The petitioner has admittedly filed regular monthly returns in Form-L only. According to her, though tax has been deducted at source by the Corporation, the details of such remittances were unavailable. She was hence unable to file monthly returns, but has been returning turnover to tax at regular rates in an Annual Return.

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3.Admittedly, the option for compounding of tax has not been exercised by the petitioner in the returns filed. However, since she had averred that the option for compounding was in fact exercised and returns to that effect handed over to the staff in the Commercial Taxes Department, a learned Judge of this Court had taken a serious view of the averments advanced and had called for the delivery book to substantiate her contention that the requisite Forms for exercise of option were received and acknowledged by the staff of the Commercial Taxes Department.

4.The dealer was called to attend the Court proceedings on 22.06.2018, when the Judge records as follows, also calling for an Enquiry Report:

> 'Pursuant to the orders passed by this Court on 19.06.2018, the dealer has not appeared, on account of certain personal inconvenience, but the original of the letter delivery book has been produced.
>
> 2.Mr.S.Thirugnanasambandam, Assistant Commissioner (ST), Kaladipet Assessment Circle, Thiruvottiyur, Chennai-19, is present in Court and after seeing the original book, he submits that the signature contained therein is not of any one of the persons working in the Thiruvottiyur Office.
>
> 3.Furthermore, the learned Government Advocate has referred to paragraph 6 of the counter affidavit to state that the stand taken by the petitioner is full of contradictions.
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> 4.This Court is of the prima facie view that the matter requires to be investigated. The learned Government Advocate is directed to submit a name of an Officer in the cadre of Joint Commissioner, who can be appointed as an Enquiry Officer. The petitioner should also furnish the names of the persons, who are alleged to have signed the letter delivery book. The original letter delivery book shall be retained by this Court.
>
> List on 06.07.2018.'

5.A Report has been filed by the Joint Commissioner (ST), who was appointed as enquiry officer and directed to conduct a comprehensive enquiry in the case. The report dated 23.08.2018 contains 4 Annexures and states at paragraph-7, after examination of the letter delivery book as follows:

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'7.Scrutiny of the "Letter Delivery Book", Statement given by the dealer before the Enforcement Wing Officers, findings of the Enforcement Wing Officers and the reply/objection filed by the petitioner/dealer to the notice issued by the Assessing Authority would reveal the following:

i). Nil return in Form-L (Nil) for the month of April, May, 2012 is alleged to have been submitted on 12-04-2012, but the acknowledgement was given by P.Dhandapani, Junior Assistant on 13-02-2016 (Page No.3 of "Delivery Note"-Annexure-II- copy).

ii). Acknowledgement was given by I.Dhanasekar, A2 Assistant on 22.10.2014 (Page No.24 of "Delivery Note"), which happened to be "Deepavali Day" [Attendance Register Page.No.11-Annexure-III].

iii). Similarly acknowledgement was given by Mr.I.Dhanasekar, A2 Assistant on 16-09-2014 (Page No.23 of "Delivery Note". But, Mr.I.Dhanasekar, A2 Assistant was undergoing training on that day. [Attendance Register Page No.7-Annexure-IV].

iv). As per the "Delivery Note", the petitioner/dealer had filed "Nil" monthly return in Form-L for all the periods under dispute. Whereas, it was deposed by the petitioner/dealer, before the Enforcement Wing Officers that she had filed only "Annual Return in Form-L". The relevant statement deposed before the Enforcement Wing Officers is extracted and placed hereunder for the sake of understanding:

> I have exercised my option to file return under section 6 of the TNVAT Act 2006 and filed only Annual return in form L and reported the total and taxable turnover as follows. [Para 2 of page 10 of Enforcement proposal, under the Caption: "I. Works Contract receipt".

Thus, it can be concluded that the dealer has filed only annual return and not monthly returns with the exception of few of the returns under section 5 of the TNVAT Act, filed online.

v). Despite there being a specific direction from the assessing authority, vide notice dated: 04-12-2017 to furnish copy of the option letter and the acknowledgement, it was replied by the petitioner/dealer, vide reply/objection, dated 15-

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> 12.2017, that the option letter and copy of the same was not readily available and that she had not obtained the acknowledgement from the assessing authority. Therefore, in the absence of copy of option letter and acknowledgement for having submitted the option in the assessment circles, the assessing authority has assessed the dealer under section 5 of the TNVAT Act rejecting the claim of the dealer for assessment under section 6 of the TNVAT Act 2006.
>
> 8. In view of the above findings, I am of the view that the "Delivery Note Book" produced before this Hon'ble High Court is not genuine. Although the signatures in the "Delivery Book" appears to match with signature of the person who worked in the office, they been obtained on a date later than the alleged date of receipt of substantiate the claim that the dealer has filed the option letter.'

6.Thus, the submission of the petitioner in regard to availment of option has been found to be incorrect and the documents produced before Court found to be non-genuine.

7.In the aforesaid circumstances, this Court is not inclined to interfere under Article 226 of the Constitution of India.

8.The enquiry officer, at paragraph-9 of the report, also states that the tax deducted at source has not been adjusted as against output tax liability determined in the impugned assessment orders and the petitioner is entitled for such adjustment after verification. As these factual matters still remain, while dismissing these writ petitions, petitioner is granted liberty to file an appeal as against the impugned order of assessment within a period of three weeks from today.

9.The learned Additional Government Pleader fairly states that if the appeal is filed within the timelines as aforesaid, no objection on limitation shall be raised. It is made clear that all other pre-conditions for filing of appeal should be adhered to by the petitioner.

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10.These writ petitions are dismissed though with the liberty as aforesaid. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

vs

To

1.The Assistant Commissioner (ST),
Kaladipet Assessment Circle,
Thiruvottiyur,
Chennai-600 019.

2.The Section Officer
ER Section (Writ)
High Court
Madras-104

+1 cc to Special Government Pleader(Taxes) sr9609
+1 cc to Mr.K.Soundararajan Advocate sr9685

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