BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.07.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.305 of 2020
and
W.M.P.(MD)No.216 of 2020

M/s.Abarna Battery Centre,
Represented by its Propretrix V.Sahiladevi,
No.10-B/45B, Pidarykulam Road,
Kumbakonam-1 ... Petitioner

Vs.

The Assistant Commissioner (ST)
Kumbakonam Town Assessment Circle,
Commercial Tax Building,
Kumbakonam ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33953941843/2015-16 dated 21.11.2019 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 12.11.2019 judicially including the opportunity of being heard.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2.The petitioner is an assessee registered with the respondent. The assessment pertains to the year 2015-16. When a surprise inspection was made on the petitioner's business premises in December 2015, certain discrepancies were noticed. Therefore, revision of the petitioner's assessment was made and an order was passed on 27.01.2017. The petitioner challenged the same by filing writ petitions in W.P.(MD)Nos.4318, 4319 and 4320 of 2017. The same were allowed on 09.08.2019. Thereafter, the petitioner was issued with the revision notice dated 17.10.2019. The petitioner was given a personal hearing and thereafter, the impugned order dated 21.11.2019 was passed. The respondent in the impugned order had assessed the escaped turnover and levied tax and penalty. It reads as under:-

> *"...[6]In view of the aforesaid reasons, the other proposal as per pre-revision notice is confirmed overruling the objections raised by the dealer. In the end, the assessment of the dealer for the year 2015-16 is revised under Section 27(1)(a) of TNVAT assessing the escaped turnover as follows:-*

Details	*Amount Involved (Rs.)*	*27(3)(c) Penalty (Rs)*
Escaped Turnover assessed to tax for the year 2015-2016	*Rs.3,37,35,993/- @ 14.5%*	*--*
Tax/Penalty	*Rs.48,81,513/-*	*Rs.73,22,270/-*
Amount Paid (4,00,000+5,20,400+6,00,000)	*Rs.15,20,400/-*	*--*
Balance payable	*Rs.33,61,113/-*	*Rs.73,22,270/-*

> *A notice in Form 'O' and Form 'RR' is issued."*

The same is put to challenge in this writ petition.

3.The core argument of the petitioner's counsel is that merely because the petitioner had failed to maintain day to day stock account for their business, the respondent could not have resorted to trading account method. The petitioner's counsel drew my attention to the decision of the Hon'ble Division Bench reported in ***1992 (1) MTCR 492***. The Hon'ble Division Bench, in the said decision, held that though non-maintenance of stock account is indeed a defect and violation of the rules, that by itself cannot give rise to an irresistible inference that the returns submitted by the assessee was 'incomplete' or 'incorrect' . The assessing authority must record a positive finding in that behalf. It is not open to the assessing authority to proceed further without recording such finding. In this case, a mere look at the order impugned in the writ petition shows that the positive finding has not been recorded. The learned counsel also pointed out that it has been held time and again that the authority cannot arrive at a conclusion by resorting to trading account method.

4.The Assessing Officer herself was present through video conference and she made certain submissions. I note that those aspects are not reflected in the order impugned in the writ petition. Therefore, on the sole ground of want of sufficient reasoning, the order impugned in the writ petition is quashed and the writ petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The respondent will issue one more hearing notice to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sji

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Assistant Commissioner (ST)
Kumbakonam Town Assessment Circle,
Commercial Tax Building,
Kumbakonam

+1 CC to M/s.S. KARUNAKAR, Advocate SR-13388[F] dated 31/07/2020

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30.07.2020

KM(CO)
TR(12.08.2020) 3P 3C