BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).No.9569 of 2020
and W.M.P.(MD).No.8626 of 2020

N.Arasu ... 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 State Tax Officer,
Devakottai Assessment Circle,
Commercial Taxes Office,
No.10A, Anna Salai Street,
Devakottai, Sivagangai District – 630 561. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN: 33845461069/2007-08 (D-41) dated 15.06.2018 and quash the same.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER
(This writ petition heard through video conference)

This writ petition has been filed challenging the impugned assessment order dated 15.06.2018 passed by the 2nd respondent under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006.

2.Heard Mr.Raja Karthikeyan, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader, appearing for the respondents.

3.It is the case of the petitioner that the impugned order is bad in law, in view of the fact that the respondents have reopened the assessment under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, without any new material for change of opinion. It is the case of the petitioner that the impugned assessment order passed by the second respondent is a second assessment order passed under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006. It is his case that the second respondent passed an assessment order under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, against the petitioner, on 25.04.2013, based on the materials available on record. However, under the impugned revision of assessment order dated 15.06.2018, passed against the petitioner for the assessment year 2007-2008 without any new material, the opinion of the second respondent has been changed and they have noticed that the petitioner has not disclosed certain assessable turn over for the assessment year 2007-2008. In such circumstances, the impugned assessment order has been challenged by the petitioner, as according to him, the same has been passed by total non application of mind and without considering the statutory provisions.

4.The respondents have filed their counter affidavit before this Court. According to them, the revision of assessment made by them under the impugned assessment order is in accordance with law and there is no violation of any statutory provision. It is their case that the judgments referred to by the petitioner has no bearing for the case on hand. According to them, sufficient opportunity has been granted to the petitioner and only thereafter, the impugned assessment order has been passed. According to them, the only remedy available to the petitioner, if aggrieved by the impugned assessment order, is to prefer the statutory appeal under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

5.The learned counsel for the petitioner drew the attention of this Court to the following authorities:

i) Judgment of the Honourable Supreme Court in the case of *Ravi Prakash Refineries (P) Ltd., Vs. State of Karnataka* dated 03.05.2016 in Civil Appeal No.4760 of 2016.

ii) A Division Bench Judgment of Andhra Pradesh High Court in the case of *Girdharlal and Company Vs. State of Andhra Pradesh* reported in (1995) 97 STC 442 (AP)

iii) A Division Bench Judgment of Allahabad High Court in the case of *Parikh and Sons Vs. Trade Tax Officer*, reported in (1998) 109 STC 631 (All) and

iv) A Common Judgment of the learned Single Judge of this Court dated 20.12.2018 in a batch of writ petitions in W.P.(MD). No.16874 of 2018 batch,

6.Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit that reopening of assessment by change of opinion is permissible only when new materials are available. He would also refer to the first revision of assessment order dated 25.04.2013 passed by the respondents under Section 27(2) of Tamil Nadu Value Added Tax Act, 2006 and would submit that based on the materials available with the second respondent, the respondents had passed the said assessment order adding 45% for probable omissions.

7.The learned counsel for the petitioner then drew the attention of this Court to the impugned assessment order dated 15.06.2018, which also passed under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006 and in particular, he referred to the second paragraph of the impugned assessment order. According to him, the second respondent has observed in the impugned assessment order as follows:

> "*On further scrutiny of assessment file and other records, it was noticed that the dealer have not reported the assessable turnover that was not disclosed under Tamil Nadu Value Added Tax Act, 2006 2006 for 2007-2008. Hence, it was proposed to levy penalty under Section 27(3) (c) of the Act.*"

8.Referring to the above observation, the learned counsel for the petitioner would point out that without any new material, the second respondent has passed the impugned assessment order dated 15.06.2018, wherein they have changed their opinion rendered in the earlier assessment order dated 25.04.2013, which was also passed under Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006.

9.According to him, the judgments relied upon by him are squarely applicable to the facts of the case and therefore, the impugned assessment order will have to be quashed. It is also contended by him that in the earlier assessment order dated 25.04.2013, refund was granted to the petitioner and despite the same, the second respondent has passed the impugned assessment order dated 15.06.2018, also under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006.

10.Per contra, the learned Special Government Pleader for the respondents would reiterate the statements made in the counter affidavit filed by the second respondent.

11.This Court has perused and examined the documents filed in support of this writ petition as well as the impugned assessment order dated 15.06.2018. Admittedly, the impugned revision of assessment order (second revision of assessment order) passed by the second respondent for the assessment year 2007-2008 dated 15.06.2018, has been passed without any new material. Earlier, the first revision of assessment order dated 25.04.2013 was passed by the second respondent. In the said assessment order, after verification of the available records, the second respondent has added 45% for probable omissions made by the petitioner in his returns submitted before the respondent Department for the assessment year 2007-2008. Thereafter, without any new material, the second respondent has passed the impugned revision of assessment order dated 15.06.2018, also under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006. The contention of the petitioner that without any new material, the impugned assessment order has been passed by the second respondent, has also not been disputed by the second respondent, as seen from the counter affidavit filed by them before this Court.

12.It is settled law, as seen from the decisions relied upon by the learned counsel for the petitioner, referred to supra, that for reopening of the assessment by change of opinion, there must be fresh or new material for the said revision of assessment. In the case on hand, without any fresh/new material, the second respondent has passed the impugned assessment order, changing their opinion from their earlier assessment order dated 25.04.2013, also passed under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006. In view of the settled position of law, the impugned assessment order passed by the second respondent will have to be necessarily quashed as change of opinion has been made without any fresh/new material. Therefore, this Court is of the considered view that the impugned assessment order passed by the second respondent under Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006 against the petitioner has not been passed in accordance with law.

13.For the foregoing reasons, the impugned assessment order dated 15.06.2018, passed by the second respondent in TIN: 33845461069/2007-08 (D-41) for the assessment year 2007-2008 is hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

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

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

2.The State Tax Officer,
Devakottai Assessment Circle,
Commercial Taxes Office,
No.10A, Anna Salai Street,
Devakottai, Sivagangai District - 630 561.

+1 CC to M/s.B.ROOPAN, Advocate (SR-22900[F] dated 26/11/2020)

W.P(MD).No.9569 of 2020
24.11.2020

kmk(CO)
KK(10.12.2020) 5P 4C